# DOCUMENT RESUME

ED 215 837 RC 013 341

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|---|---|
| TITLE | Special Education Handbook. |
| INSTITUTION | Bureau of Indian Affairs (Dept. of Interior), Window Rock, Ariz.; Southwest Regional Resource Center, Salt Lake City, Utah. |
| SPONS AGENCY | Bureau of Education for the Handicapped (DHEW/OE), Washington, D.C. |
| PUB DATE | Jun 80 |
| CONTRACT | OEC-300-78-0016 |
| NOTE | 472p.; Some pages may not reproduce clearly. |
| EDRS PRICE | MF01/PC19 Plus Postage. |
| DESCRIPTORS | Accessibility (for Disabled); American Indian Education; American Indians; Definitions; *Disabilities; Elementary Secondary Education; Eligibility; *Handicap Identification; *Individualized Education Programs; *Program Implementation; *Special Education; Test Bias |
| IDENTIFIERS | Basic Indian Education Act; *Education for All Handicapped Children Act; *Navajo (Nation); Public Law 94 142; Public Law 95 561 |

ABSTRACT

In order to provide special education programs that are responsive to the needs of Navajo students and in order to comply with the Rules and Regulations of Public Law 94-142 (The Education for All Handicapped Children Act) and Public Law 95-561 (Education Amendments of 1978), the information in this handbook provides guidance to teachers and administrators who are charged with educating handicapped Navajo students to their full potential. The handbook is divided into 12 chapters about: the special education process; eligibility criteria and programming considerations for the deaf and hearing handicapped, deaf-blind, homebound or hospitalized, mentally handicapped, multihandicapped, orthopedically impaired, other health impaired, seriously emotionally disturbed, specific learning disabled, and speech impaired; the Individualized Education Program; procedural safeguards; teacher performance standards; memoranda; coding information; and allowable costs and Element 18 applicable components. Appendices offer guidelines for reviewing assessment procedures and psychoeducational reports, identification of bias in testing, an accessibility checklist, a staffing guide for programs for the handicapped, directions for completing a LEA appplication, and proposed rules and regulations for PL 95-561 and PL 94-142. (ERB)

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Division of Exceptional Programs
Navajo Area
Bureau of Indian Affairs

# SPECIAL EDUCATION HANDBOOK

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Developed by a Task Force

and

The Southwest Regional Resource Center
H. Wayne Johnson, Director

Jean J. Moore, Program Specialist
for Publications

June, 1980

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Southwest Regional Resource Center
Contract No. OEC-300-78-0016

This document was developed jointly by the Southwest Regional Resource Center and the Navajo Area Education Office, Division of Exceptional Programs; The Southwest Regional Resource Center supported all work prior to the actual printing, which was underwritten by the Area Office. The work completed by the Southwest Regional Resource Center was performed pursuant to a contract with the Office of Education, U. S. Department of Health, Education and Welfare. Contractors undertaking such projects under Government sponsorship are encouraged to express freely their professional judgment in the conduct of the project. Points of view or opinions stated do not, therefore, necessarily represent Office of Education position or policy.

Bureau of Education for the Handicapped
U. S. Office of Education
Department of Health, Education and Welfare

# Foreword

The idea for the Navajo Area Special Education Handbook was conceived nearly one year ago. Laurine Ruleau, then Area Education Specialist, contacted the Southwest Regional Resource Center for technical assistance in developing such a handbook. Bureau of Indian Affairs schools had begun receiving funds from Public Law 94-142 (The Education for All Handicapped Children Act) making the first monies available specifically for exceptional students in BIA schools. Public Law 95-561, the Education Amendments of 1978, provided the opportunity for the Bureau to adjust and respond to changing needs in the educational system. The idea behind the handbook was to provide a reference to help assure compliance with the above-mentioned and other laws.

Ms. Ruleau retired shortly after work began on compiling the information for this handbook. The Area Office called together a task force, and members submitted information and critiqued drafts of the handbook as it developed. Task force members felt strongly that the book should be a comprehensive package, containing in one place the criteria and procedures needed to deliver special education and related services to exceptional Navajo students.

The sections of the handbook are numbered separately so that it can be kept current by the special education teachers, support personnel and administrators for whom it was prepared. Everyone who receives a copy of the handbook must assume responsibility to replace pages or sections as they are superceded by more current information. For example, the book now contains the latest draft of the Rules and Regulations for PL 95-561. The final rules, which will be available in a few months, will be sent to each Agency to disseminate to the schools. While changes to the draft rules will probably be minimal, changes, nevertheless, will occur. To assure that schools and school practices are in compliance with the rules, it will be necessary for all special education staff and administrators to know and understand the laws, and keep current their own copies of the Navajo Area Special Education Handbook. The framework for the handbook is PL 94-142, and it is anticipated that the book will remain consistent with PL 95-561. Any changes will be forwarded to handbook holders.

The Area Office, Division of Exceptional Programs, appreciates the work and ideas from the Agency staff members who helped formulate this handbook. Their names are listed on the following page.

Norman G. Wilcox

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# 1. INTRODUCTION AND DEFINITIONS

# Philosophy

> §1311.12. Rights of individual students.
>
> (a) Individual students enrolled in Bureau [Bureau of Indian Affairs] schools shall have and be accorded the basic right to an education, including the inherent ingredients necessary for maximal growth and development of each student. . .
>
> In this regard, therefore, the Bureau's educational programs, including extracurricular activities, shall accord students the following rights. . .
>
> (14) The right of all handicapped students to the benefits of all rights and privileges prescribed by existing laws, including but not limited to the rights granted under The Education for All Handicapped Children Act (Pub. L. 94-142, 20 U.S.C. 1411 *et. seq.*). (Proposed Rules for Indian Education Policies in Public Law 95-561.)

To offer quality education as required by PL 95-561 and PL 94-142, the emphasis in Bureau of Indian Affairs schools must be directed toward implementing programs for exceptional children in the least restrictive environment.

Special education is an extension of practices and services growing out of the study and knowledge of individual differences. PL 94-142 states that all children in our society have a right to equal educational opportunity; it is readily recognized that equal opportunity does not mean identical educational programs for all children. Special education attempts to provide an appropriate education for all exceptional children in the least restrictive setting to meet the differing needs due to the physical, mental or social characteristics of children who are in need of special education services. Essentially, BIA philosophy specifies that each individual is entitled to an education which will enable each person to achieve to the maximum of his/her abilities.

## Introduction

In order to provide special education programs that are responsive to the needs of students in the Navajo Area, and in order to comply with the Rules and Regulations of Public Law 94-142 (The Education for All Handicapped Children Act), and the Rules and Regulations for PL 95-561, the information which follows has been prepared. The use of the standards outlined here should provide guidance to teachers and administrators who are charged with educating Navajo students to their full potential. The implementation of these standards also should be helpful in achieving consistency in special education services across all Agencies in the Navajo Area.

Additionally, the use of these standards should be of great benefit when Navajo children move from a Bureau of Indian Affairs School to a public school in one of the states surrounding Navajo. If a child has been declared eligible for special education based on assessment of his/her educational strengths and weaknesses, it is of critical importance that the records which go with the transferring student verify that the assessment covered all needed areas and was performed by a professional certified to conduct such testing. Furthermore, the records should show that the child's eligibility was determined by a group of professionals and not by one person, and was not based on tests in only one area. If such records are incomplete or do not provide the kind of information needed by the receiving school, valuable instructional time will be lost for the student while retesting and reinterpretation of the results take place.

The emphasis of the federal laws is on meeting individual child needs. Because the funding for and reporting on children served depend on categories, however, each child receiving special education must be designated as handicapped in a specific disability area. It is important for administrators, teachers, aides and support personnel serving handicapped children to think in categories only on paper; when a service is being planned for or delivered to a student, it is the individual student's need for the service, not the category, that should direct the planning and the program.

### Individualized Education Program

The heart of PL 94-142 is the IEP--the Individualized Education Program. Each child receiving special education must have an IEP that sets forth goals and objectives for that child. The writing of the IEP should involve the parents (and school personnel must consider the parents' educational goals for their child as having equal importance with the school's goals). The IEP must be based on educational needs of the child--not on his/her official category, such as mentally retarded, learning disabled, orthopedically impaired, etc. (See IEP section for more detailed information.)

## Procedural Safeguards

PL 94-142 specifies a comprehensive set of procedural safeguards that must be in place to assure that the rights of handicapped children and their parents are protected:

Parents must receive prior notice[1] whenever the school proposes to initiate or change or refuses to initiate or change the identification of the student as handicapped, the assessment or the placement of the student, or the provision of a free appropriate public education. Prior notice means that the parents understand the notice (including receiving the information in their native language or through a translator if they are deaf).

Informed, signed parent consent[2] must be obtained before a child is initially assessed for possible special education placement, and before the child is placed for special education services, which includes the delivery of special education in the regular classroom.

Parent participation[3] in the writing of the IEP must be actively sought. Should the parents not wish to participate, the IEP must still be developed by an appropriate team and the program should be implemented. School records must document, however, that parent participation was sought. Any member of the team, including the parent, can call for a discussion to consider revision of the IEP at any time they feel the child is not making progress, or that the IEP is not appropriate for the child. (The IEP must be reviewed at least annually--again with parent participation.)

Both parents and the school are guaranteed the right to an impartial due process hearing[4] when there is an impasse between the parents and school staff regarding the areas covered by prior notice (proposal or refusal to initiate or change the identification of the student, the assessment of the student, placement, or the provision of a free, appropriate public education). Parents should NOT have to request an impartial due process hearing on compliance matters. For example, the federal law assures every school-aged handicapped child or youth a free, appropriate public education. If a school-aged person is denied access to an education because of a handicap, the public agency responsible is clearly out of compliance with the law. Such matters should be dealt with administratively through available sanctions, such as withholding of funding, loss of accreditation, etc. A school may also request an impartial due process hearing if school staff feel that a child is being denied an appropriate education because his/her parents will not consent to assessment of the child, to placement in a special education program, etc. This right of both sides to address a conflict through a hearing before an impartial third-party is predicated upon the belief that the school must advocate for the handicapped child as forcefully as the parent could.

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[1] §121a.504 and 121a.505

[2] §121a.504

[3] §121a.345

[4] §121a.506

Other procedural safeguards outlined in PL 94-142 include parent access to educational records[5] of their child; the right to obtain an independent educational evaluation[6] (at public expense, under certain conditions); the right of a child to be represented by a surrogate parent[7] when the parents cannot be identified, when the parents cannot be found, or when the child is a ward of the state; protection in evaluation[8] (assessment) procedures; the right of the child to placement in the least restrictive environment;[9] and confidentiality[10] of the child's educational records.

Because of the comprehensive nature of PL 94-142, every teacher and administrator who oversees or delivers special education programs to handicapped studnets should study the Rules and Regulations for PL 94-142, and become familiar with their provisions. (See Appendix G for copy of the rules.) Some of the topics that have been touched upon in this introduction are discussed in greater detail in later chapters. In the Forms section, examples which will fulfill the requirements for prior notice and parent consent are reproduced.

With the implementation of PL 94-142 and PL 95-561 in Bureau of Indian Affairs Schools, all handicapped Native American children are assured of the right to an appropriate education. To implement programs that will guarantee that these rights are fulfilled calls for knowledge on the part of those serving handicapped children, and commitment to the belief that PL 94-142 is the framework for sound educational practices.

## Program Standards

The purpose of this document is threefold:

To establish the minimum standards for program approval;

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[5] §121a.562
[6] §121a.503
[7] §121a.514
[8] §121a.531 to 121a.534
[9] §121a.550 to 121a.554
[10] §121a.572

To establish the minimum standards for the determination of pupil eligibility; and

To establish considerations which will lead to appropriate programming within the least restrictive environment.

It is important to note that minimum, not optimum, standards are being addressed. An Agency or school may establish criteria which exceed the standards stated herein; however, at no time may criteria be established which are lower than the standards stated here.

Program standards are those considerations for operating a program independent from the student per se. The eligibility criteria (in a separate section) include minimum criteria for the establishment of eligibility and are student-centered. The sections must be used in conjunction with each other. It cannot be overly stressed that once eligibility for special education services has been determined through the process set forth, programmatic categorization of the student and/or service is not necessary. It is important to further note that the services provided are dependent upon the educational needs of the student and not upon the categorization of the student.

## Definitions

### Special Education

§121a.14. (a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

## Related Services

§121a.13. (a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or language disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools,

(ii) Travel in and around school buildings, and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

Evaluation Procedures

§121a.532. State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child;

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability; and

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status [language development] and motor abilities.

## Eligibility

The federal laws do not contain a single specific statement on determining eligibility for special education. Different sections speak to the eligibility issue, however. §121a.5 defines handicapped children as those who have been evaluated by a multidisciplinary team or group of persons--using valid tests and other materials that are not racially or culturally discriminatory which assess all areas related to the suspected disability [§121a.530 - 121a.534]; through these procedures, the children have been found to need special education and related services. As a further safeguard, the rules require that a group of persons determine the child's placement (§121a.533), and that the special education and related services provided are based on the child's IEP (§121a.533(b))--again the IEP is formulated by a group of persons, which should include the child's parents.

## Least Restrictive Environment

§121a.550. General. (a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§121a.550-121a.556.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

## Facilities

When planning the special education program the following should be utilized when selecting the facilities for use in the special education program. In keeping with the intent of federal legislation (PL 94-142 and Sec. 504, Nondiscrimination on the Basis of Handicap), the students should be able to mingle freely with their nonhandicapped peers at all possible times. This calls for locating special classrooms in the main flow of the building.

**Self-Contained Classroom:** The special education self-contained room should be at least 900 square feet in area. The nature of the program should be considered in locating and/or designing the room.

Toilet areas should conform to American National Standards Institute specifications for accessibility by physically handicapped students. There should be a minimum of 100 square feet of storage space, part of which needs to be enclosed. A sink with hot and cold water as well as a work counter are recommended for the elementary level, self-contained classroom.

Resource Room: New construction of a special education resource room, in order to provide for flexibility in present and future programming, should be a minimum of 900 square feet of floor space. Temporary facilities may be approved with a minimum of 60 square feet per student served, plus a minimum of 100 square feet for storage.

Related Services Rooms: Smaller rooms may be provided for occupational, physical, and speech therapy activities. The size of these rooms shall be dictated by the activities to be carried on in these rooms.

Architectural Barriers: Architectural barriers that limit student access to a special education program must be eliminated. Agencies and schools planning special education facilities and/or the elimination of architectural barriers in existing facilities should refer to the American National Standards Institute's specification for making buildings and facilities accessible to and usable by physically handicapped people, ANSI A117.1-1977. See Appendix C for accessibility checklist.

## Itinerant Instruction

Instruction provided by a special education teacher to individual students removed from the classroom for intensive instruction which may be academic or therapeutic. The instruction provided may be for short periods of time each day or for short periods of time on a rotating schedule.

## Consulting Teacher

A special education teacher who has for his/her primary role that of consulting with regular and special education teachers regarding the modification and/or adaptation of instruction for specific handicapped students. The consulting teacher may provide limited direct instruction to the student.

## Resource Services

Instruction provided by the special education teacher to a student for a period(s) of time not to exceed fifty per cent of the instructional day.

## Self-Contained Services

Instruction provided by a special education teacher to a student which exceeds fifty per cent of the instructional day.

## Self-Contained Services In Resource Room

This service setting is primarily one providing resource room services. However, because of the need for self-contained services on a very limited basis (usually one to three students), students may be self-contained within the resource room. Careful consideration must be given to the number of students receiving self-contained services within the resource room in order to ensure that both services are programmatically sound.

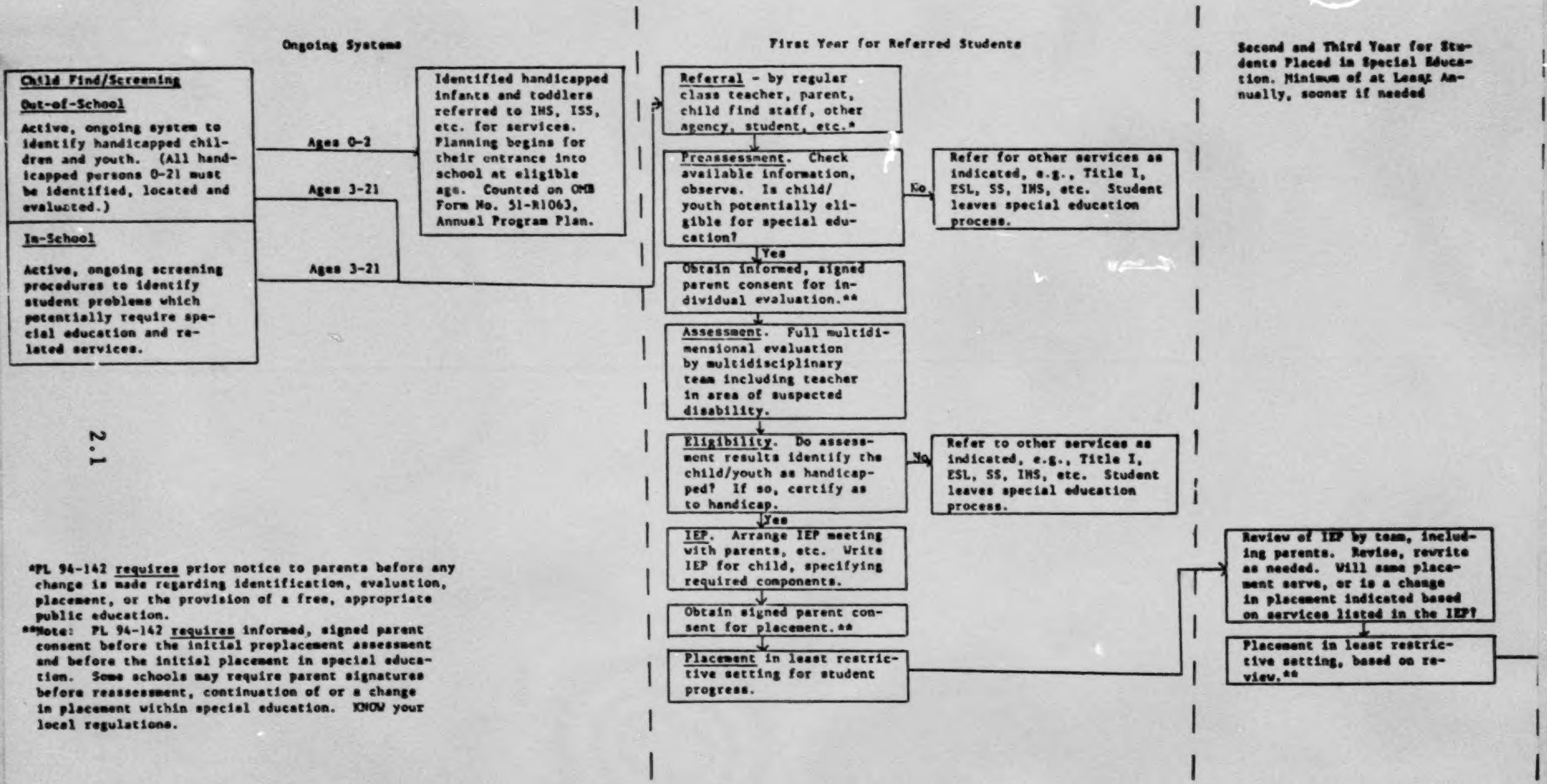
## Resource Services in Self-Contained Room

This service setting is primarily one providing special class services. However, because of the need for resource room services on a limited basis (usually within four to five students), students may receive resource room services within the special class. Careful consideration must be given to the number of students receiving resource room services within the special class in order to ensure both services are programmatically sound.

See Appendix D for "Staffing Guide for Programs for the Handicapped,"

# 2. SPECIAL EDUCATION PROCESS

# The Special Education Process


Ongoing Systems
First Year for Referred Students
Second and Third Year for Students Placed in Special Education. Minimum of at Least Annually, sooner if needed
Ages 0-2
Ages 3-21
Ages 3-21
No
Yes
No
Yes

Child Find/Screening

Out-of-School

Active, ongoing system to identify handicapped children and youth. (All handicapped persons 0-21 must be identified, located and evaluated.)

In-School

Active, ongoing screening procedures to identify student problems which potentially require special education and related services.

Identified handicapped infants and toddlers referred to IHS, ISS, etc. for services. Planning begins for their entrance into school at eligible age. Counted on OMB Form No. 51-R1063, Annual Program Plan.

Referral - by regular class teacher, parent, child find staff, other agency, student, etc.*

Preassessment. Check available information, observe. Is child/youth potentially eligible for special education?

Refer for other services as indicated, e.g., Title I, ESL, SS, IHS, etc. Student leaves special education process.

Obtain informed, signed parent consent for individual evaluation.**

Assessment. Full multidimensional evaluation by multidisciplinary team including teacher in area of suspected disability.

Eligibility. Do assessment results identify the child/youth as handicapped? If so, certify as to handicap.

Refer to other services as indicated, e.g., Title I, ESL, SS, IHS, etc. Student leaves special education process.

IEP. Arrange IEP meeting with parents, etc. Write IEP for child, specifying required components.

Obtain signed parent consent for placement.**

Placement in least restrictive setting for student progress.

Review of IEP by team, including parents. Revise, rewrite as needed. Will same placement serve, or is a change in placement indicated based on services listed in the IEP?

Placement in least restrictive setting, based on review.**

*PL 94-142 requires prior notice to parents before any change is made regarding identification, evaluation, placement, or the provision of a free, appropriate public education.

**Note: PL 94-142 requires informed, signed parent consent before the initial preplacement assessment and before the initial placement in special education. Some schools may require parent signatures before reassessment, continuation of or a change in placement within special education. KNOW your local regulations.

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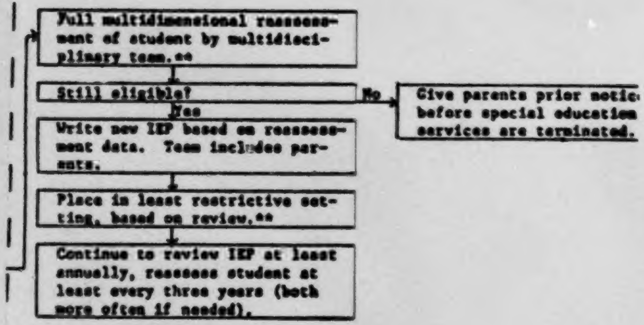
## The Special Education Process (Continued)

Fourth Year Following Referral of Students Placed in Special Education; sooner if needed. (Test results valid for 3 years maximum. Reassessment must occur before anniversary date of prior testing.)


Full multidimensional reassessment of student by multidisciplinary team.**
Still eligible?
No
Give parents prior notic before special education services are terminated.
Yes
Write new IEP based on reassessment data. Team includes parents.
Place in least restrictive setting, based on review.**
Continue to review IEP at least annually, reassess student at least every three years (both more often if needed).

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# The Special Education Process

Not all of the children and youth who have problems in school should receive special education. Determination that a student is eligible for special education cannot be made by one person nor from the results of one test. An orderly progression of events must occur prior to the declaration of eligibility for special education.

The steps in the process for a child who needs special education, as illustrated on the flow chart, are:

1. Child Find/Screening
2. Referral
3. Preassessment
4. Assessment/Reassessment
5. Eligibility
6. IEP
7. Placement
8. Review of the IEP

These steps are discussed in the following materials. The files of a student who is now in special education should contain information on the referral, screening and preplacement assessment, as well as a formal declaration of the child's eligibility and handicap. The IEP must be reviewed at least annually by a group of people (including the parents, if possible); continued placement or placement in another program would be based on the new IEP. Further, every child in special education must be reassessed at a minimum of every three years. Reassessment must be a thorough as was the original evaluation which resulted in placement in special education.

The procedural safeguards required by PL 94-142 specify where prior notice and where parent consent are mandatory. Parent participation should be sought in all planning for the student, and, while not mandatory for developing the IEP, the school's attempts to arrange a meeting with the parents must be documented in the student's folder.

Following the discussion of the eight steps in the special education process, is the section containing information on eligibility criteria and programming considerations.

## Child Find/Screening

Out-of-school: Each Agency/school must maintain an active, ongoing child find effort. Out-of-school children (0-21) who are located who potentially may be eligible for special education and related services will receive an evaluation through the agency/school or through arrangements made by the agency/school with other public agencies.

In-school: Each Agency/school should systematically screen for learning, behavior and health problems in regular settings. Systematic screening could be scheduled for kindergarten/first grade, or fifth/sixth grade, etc. Screening programs typically include vision and hearing screening, but should be enriched to include academic and behavior screening. Screening is conducted on a group basis, and whole classrooms or grade levels are screened at a time. Formal norm referenced tests or informal teacher made criterion tests may be employed. Prereferral screening allows the teacher to efficiently identify potential learning and behavior problems in large groups of students.

## Referral

Referral of a student for possible special education services may come from the parent, the regular classroom teacher, the school nurse, the social worker, the principal, other support staff members, a tribal leader, a person from another agency, etc. It may even come from the student. Student characteristics which may lead to a referral are discussed later by category, although the specificity of the referral may vary considerably, depending on the source. Many children will be referred who will be found to be ineligible for special education because their difficulties in school are not based on a handicap. One administrator should be responsible for receiving all referrals and following through to see that students who are later found ineligible are provided with other types of services which will meet their needs. This may involve providing assistance to the teacher, a Title I reading program, or similar types of help.

## Preassessment

Once a referral has been made on a student, preassessment should begin. This includes studying the child's cumulative folder (is this a new problem or a recurring one?), observing the child in the classroom and lunchroom and on the playground, and rescreening for hearing or vision problems. The child's teacher should be interviewed, and anectodal records reveiwed. Academic progress, communication, emotional and psychomotor problems and reading skills should be reviewed. The records of students who transfer in to the agency/school should be studied in a similar way. The important distinction between preassessment and assessment is that preassessment involves using information that exists in the files or that can be informally observed. Once any test is given to a child and not to all children in the group, it is considered to be a preplacement assessment, and signed parental consent must be obtained. Preassessment examines whether or not the student is potentially eligible for special education.

## Assessment/Reassessment

Assessment of children and youth for possible placement for special education services demands signed parent consent. Determination should be made for each child of his/her primary language. If the child's language is other than English, an evaluator fluent in the primary language should be used if possible. Test instruments should be utilized which do not stress spoken language and which are considered valid and reliable performance measures of functioning. The assessment procedures will vary, depending on the handicap (see information by individual categories). The evaluation must be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the suggested disability. If records are available from other agencies which would be useful in the evaluation, signed parent consent should be obtained to receive these records. Components of the assessment should examine the student's achievement (for determining present levels of functioning for the IEP), intellectual functioning, adaptive behavior, receptive and expressive language, and other tests as needed to provide a comprehensive assessment.

Some tests can be administered by the trained classroom teacher. Any tests that are to be utilized as components of the comprehensive evaluation and not administered by the primary evaluator should be completed first and results incorporated into the evaluation report. The primary evaluator may request permission to conduct further assessment if results from various sources appear to be contradictory. It is mandatory that a signed statement of the primary handicapping condition be included within the student's folder; therefore, it is imperative that test selection be based on the individual needs of the student. In addition, the primary handicapping condition stated must be reflected within the evaluation data and evaluation report on the student. Concise written reports should be prepared on all assessment information to be considered by those who will decide if the student is eligible for special education. (See Appendix B for information on a checklist to identify bias in testing.)

Every student receiving special education must be reassessed at least every three years, or more often if requested by the teacher or the child's parents. The reassessment shall be as thorough as the original assessment to determine eligibility. The safeguards outlined for preplacement evaluation shall be met. Interpretation of the reassessment information may lead to a change in placement. Here, as in all service considerations, each handicapped student's program will be considered individually.[1] Should reassessment show that the student no longer needs special education, the parent should receive prior notice before the special education services are terminated.

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[1] §121a.534

When a professional is hired through a subcontract to conduct part of the assessment or reassessment, it is imperative that the contracting agency determine the certification credentials of the professional, and that these credentials match requirements in the state in which the school is located. (Some psychologists have sought and obtained certification in several states in order to assure marketability of their skills.) Part of the agreement with the subcontractor should be the provision of educational prescriptions based on the child's deficits. It can be very discouraging to a teacher who receives a child with a sheaf of test results that do not provide any suggestions for methods or remedial steps for helping the child progress in spite of the handicap. The checklist in Appendix A provides guidelines for evaluating psychological reports that are either purchased or provided by agency or area personnel.

## Eligibility

PL 94-142 identifies handicapped children as those with specified handicaps, who, because of these impairments, require special education and related services. In other words, a student in a wheelchair may appear to be handicapped, but if the child is able to participate fully and progress satisfactorily in the regular education program, he or she would not be classified as handicapped because the student would not need special education and related services. However, if all the other students in the class receive physical education and this student could not participate, but required adaptive physical education (defined as a special education service), then the student would be declared eligible for special education to receive a free, appropriate public education (in this case, the inclusion of adaptive physical education).

Declaring a child or youth eligible for special education must be a decision by a team or group of persons.[2] Included in this meeting should be the principal, the teacher who has been instructing the child and the teacher who would provide special education, evaluation specialists, and the parent, if possible. Eligibility for special education would be a group decision, and a statement of eligibility, defining the handicap, would be signed by all professionals present. The parent must sign prior to placement of the child or youth for special education services.

Because of the interrelatedness of the steps from eligibility to writing the IEP, and to placing the student in a class where the services listed on the IEP can best be delivered, the administrator may wish to schedule these events at the same meeting. Thus, the evaluators, who will help interpret the assessment results toward determining eligibility, can also provide help in writing the IEP. The parents, besides participating in the formulation of the IEP, will be available to sign for placement. If the multidisciplinary team that will be used to assess children must be brought in to a school, several children could be assessed the same day; meetings could be scheduled with parents, team members, and local school staff for the following day to expedite the delivery of special services to students who need them.

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[2] §121a.533

The inclusion of the parents in the decision-making process for their child must be more than a gesture--it must be seen as a working partnership between the parents and school on behalf of the handicapped student. Should a meeting be scheduled with parents whose child is found to be ineligible, school staff could meet with parents to explain alternative programs that could be offered to their child.

## The Individualized Education Program (IEP)[3]

Before a student can receive special education services, an IEP must be developed for the student. Before related service can be provided, it must be determined that the related services are needed to enable the student to benefit from special education. Both the special education and related services to be provided to the child must be specified on the IEP. (A separate section discusses the IEP in greater detail.) Once the IEP is developed, then a placement decision must be made. Where will the student receive the services called for on the IEP? The information on Programming Considerations for each category should be useful when developing the IEP and planning daily instructional activities.

## Placement

Using and interpreting the information obtained through the screening and assessment procedures, a team of persons should make a placement decision about a child who has been declared eligible for special education. Delivery of the services specified in the IEP in the least restrictive setting should set the parameters for the placement decision. Persons making this decision should understand the evaluation data and know the placement options in the Agency. Each public agency (school or Agency) must have access to a continuum of services to assure that each student will be served in the least restrictive environment; alternative types of programs must be developed or cooperative arrangements made with other schools when a student needs a program not currently available. Handicapped children should attend the school they would attend if they were not handicapped, unless the IEP calls for services that cannot be delivered at that location.

The team makes a recommendation for placement in generic terms (for example, a regular classroom placement, combination services in a regular classroom and in a resource room, placement in a self-contained class, with art and music with the regular class, etc.). It is generally the local special education director's prerogative to assign a child to a specific teacher, although the director must be sure that the team's recommendations are honored. Placement for special educa-

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[3] §121a.343 - 121a.349

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tion and related services is made only upon informed, signed parent consent, and is reviewed annually.[4]

The continuum model below shows both services and program options based on severity of handicapping condition. The chart should not be construed as the only way to determine the least restrictive environment. (Note that the IEP calls for a statement of the extent to which the child will be able to participate in regular education programs.)

| Most Instruction in Regular Class | | | Some Instruction in Regular Class | No Instruction in Regular Class | | |
|---|---|---|---|---|---|---|
| Indirect Service | Some Direct Instruction | Less than 50% of Instructional Day in Resource Room | Minimum of 50% of Instructional Day<br>Self-contained | Special Day Service Facility | Homebound Instruction | Hospital Program 24 hour Residential School |

MILD——————————————————SEVERE

(Degree of Handicapping Condition)

For service setting decisions and the resulting least restrictive environment, the following general factors should be taken into consideration:

1) Severity of the Disability

   In general, the more severe the handicapping condition, e.g. vision, hearing, intelligence, perception, etc., the more structure the student will need in the program.

2) Achievement

   The degree to which a student is progressing relative to his/her peer group within the regular education program.

3) Success with Regular Program

   The portion of the regular education program in which the student is expected to make satisfactory progress.

4) Diagnosticians' Recommendations

   The summary of information from the team who conducted the educational evaluation of the student.

5) IEP Team's Recommendation

   The IEP team has the responsibility to review the statement of primary handicapping condition of the student and the resulting educational deficit and to develop, based on all data, an individualized education program (IEP) for the student. After the development of the IEP, the team selects the most appropriate service(s) needed by the student in order to implement the IEP.

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[4] §121a.550 - 121a.554

Service(s) provided to a student are subject to continual revision based on the student's progress or lack of progress in the service setting provided. Any member of the IEP team can call for a meeting of the team to consider revision of the IEP if the student is not progressing as expected.

The lesser restrictive the setting in which the student is receiving services, the more essential is continuity in the implementation of the IEP between the special education services and the regular classroom services. If it becomes evident that continuity of the IEP is not present, assistance should be given to the teachers to enable them to communicate and plan together more effectively. If the lesser restrictive environment is impeding the student's progress, it then becomes necessary and appropriate to consider a more restrictive environment (setting). The goal should be to find the least restrictive setting in which the student can make the expected progress. See Appendix D, Staffing Guide for Programs for the Handicapped.

At any time more than one exceptionality may be provided services within the same setting. For example: mildly handicapped students from more than one exceptionality may be served within the same service setting and moderate to severely handicapped students from more than one exceptionality may be served within the same service setting.

## Review of the IEP

At least annually, each student's IEP will be reviewed, and revised as necessary. This would include formulating new annual goals and short term instructional objectives, changing the services as needed (for example, a child who has been receiving speech therapy may no longer require such services, but may need adaptive physical education because of a move to a grade where all students receive physical education instruction). The percentage of time that will be spent with nonhandicapped students in various activities may be increased or decreased, depending on the progress the student has made. Prevocational training activities may be added if the student is approaching junior high school age. The review is the time for the teachers, the other professionals and the parents to lay sound plans for the year ahead to help move the handicapped student toward as much self-sufficiency as possible. At a minimum, the teacher, the local administrator responsible for special education, and the parent should participate in the annual review. Support staff and others should participate if their expertise and insight are needed. The student may also participate. During the annual review, as in all other meetings and notice considerations, parents whose primary or preferred language is other than English must be provided with an interpreter or translator. Documentation must be kept in the student's file that the parent understood the purposes and outcomes of the meeting.[5] If the parent does not attend the annual review, documentation must show that the school tried several alternative ways to arrange a meeting with the parents at a mutually agreeable time and place. At the annual review, it may also be determined that the student has overcome his/her educational deficits, and should return to regular education. (Prior notice to the parents is required before terminating special education services.)

## Process Summary

The steps in the special education process--child find, referral, preassessment, assessment and reassessment, eligibility, IEP, placement, and IEP review--must be followed for all children who enter special education. Once a team declares a student eligible for special education, develops an IEP, and makes placement recommendations, all that may be needed the two subsequent years would be the annual review of the child's IEP. The third year, reassessment would be required, and a new IEP would be developed. In the section which follows, some of the steps are discussed as they relate to a student with a particular disability. This information should help teachers, administrators and support personnel provide appropriate programs for all handicapped students in the Navajo Area.

The Proposed Rules for PL 95-561 and the Rules and Regulations for PL 94-142 are included in Appendices F and G. Every administrator, teacher and support staff member who serves handicapped students should study these regulations, not only to learn the specifics of the law, but also to understand the scope and intent of the legislation. The law mandates the protection of rights of handicapped students and of their parents. Public Law 94-142, the Education for All Handicapped Children Act of 1975, mandates the implementation of practices that do assure individualized programs for children, that do assure the participation of parents in the educational decision-making for their child, and that do require accountability for funds spent for individual handicapped children. Section 504, Nondiscrimination on the Basis of Handicap, is strengthened by the processes mandated by PL 94-142. Special education personnel throughout the United States must individually assume responsibility for knowing and following the procedural safeguards of the law.

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[5] §121a.243

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# 3. ELIGIBILITY CRITERIA AND PROGRAMMING CONSIDERATIONS

Note: Much of the information in this section came from the State of Arkansas' document entitled "Program Standards and Eligibility Criteria for Special Education." Their permission to use this information is appreciated.

## Deaf and Hearing Handicapped

### I. Definition

A. "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance. (§ 121a.5(b)(1))

B. "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section. (§ 121a.5(b)(3))

### II. Possible Referral Characteristics

Hearing handicapped individuals are classified into two categories: (1) deaf and (2) hard of hearing. A deaf individual is one whose auditory channel does not serve as the primary sensory means by which speech and language are received and developed. This hearing impairment is usually based upon the amount of hearing loss, age of onset, and ability to communicate. A hard of hearing person is one whose auditory channel does serve as the primary sensory means by which speech and language are received and developed. This hearing impairment is based upon the amount of hearing loss. It is important to possess an understanding of these categories. This is especially true of the hard of hearing category as these children may not be identified until they begin school or because of one reason or another, the hearing loss may result anytime during their years in school.

A. Intellectual:

- intellectual functioning is not as strong an indicator as other referral characteristics

B. Academic:

- has poor reading skills
- tends to do better in math than reading
- learns better when materials are presented through concrete procedures

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C. Behavior:

- frequently uses "neutral response," smiling, saying "yes" and periodically nodding in situations where he/she lacks understanding
- has difficulty following verbal directions or does not respond
- frequently asks to have statements repeated
- is inattentive in group activities
- appears to be confused, especially in noisy situations
- makes linguistic errors, such as dropping "s" plurals and possessive endings, e.g. says, "The boy hat" for "The boy's hat."
- tends to be on guard more than usual if he/she feels inadequate
- gives inappropriate answers to simple questions
- may isolate self or be isolated by peer group
- has complete or partial misunderstanding of conversation
- has poor ability to hear or discriminate between environmental sounds
- has difficulty in locating source of sound or speech; may not hear or be able to detect the direction of a sound or speaker while hearing classmates can easily determine the location
- is overly dependent on visual clues
- has low tolerance for frustration
- often speaks too loudly
- impulsively grabs for objects

D. Language:

- spoken and/or written language not comparable to that of peer group or may be totally absent

- sounds distorted and/or omitted from words, e.g., "I caught a fish" may be spoken or written as "Me cau___ fi__"

- spoken and/or written words omitted from sentences or word order may be unintelligible, i.e., "Finished home" for "When he was finished, he went home"

- lack of use and understanding of figurative and abstract patterns in spoken and/or written language including idioms, metaphors, similes or personfications

- voice quality harsh, breathy, nasal and/or monotone

- pitch, rhythm, stress, inflection, and/or volume inappropriate

E. Physical:

- history of frequent earaches or ear discharge, or nasal obstruction with associated mouth breathing or other nasal symptoms - frequent colds, sneezing, earaches, allergies, history of viral infections, high fever, etc.

- familial history of hearing loss and/or ear disease

- history of dizziness and balance problems

- deformity of the outer ear

III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation of the child

E. Review of anecdotal records

IV. Assessment

An evaluation, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary language shall be determined. If the language is other than English, an evaluator shall be used who is fluent in the child's primary language and English, or an interpreter shall be used to assist in language and testing. Test instruments should be used which do not stress spoken language and which are considered valid and reliable performance measures of functioning. Signed parent consent shall be obtained prior to the assessment.

A. The reason for referral

B. Complete audiological evaluation

C. Otological examination

D. Educationally relevant medical findings

E. Educational history of the child including documentation of efforts to educate the child in the regular classroom

F. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

G. Types of tests administered to the child and results of such tests.

H. A recommendation of specific goals and instructional objectives based upon the current levels of performance needs

I. An educational evaluation

J. The following tests may prove helpful: Utah Test of Language Development, Carrow Test for Auditory Comprehension of Language

## V. Programming Considerations

Educational provisions and techniques for teaching deaf students are different from those utilized in working with the hard of hearing. Since hard of hearing students have the ability to acquire speech and language skills, they can learn through methods and techniques used with individuals with normal hearing. When a hard of hearing student is served in the regular classroom, the following guidelines should be observed:

- Seat the child where he/she can see the lip movements easily. Avoid seating facing bright lights or windows.

- Speak naturally in complete, grammatical sentences. Do not speak too loudly, especially if the child is wearing a hearing aid.

- Avoid visual distractions such as excessive make-up and jewelry which would draw attention away from the lips.

- Do not stand with your back to a window or bright light source. This throws the face in a shadow and makes speech-reading difficult.

- Try not to move around the room while speaking or talk while writing on the board. If possible, use an overhead projector, which allows one to speak and write while maintaining eye contact with the children.

- During class discussions encourage the hearing-impaired child to face the speaker. Allow him/her to move around the room if necessary to obtain a better view.

- When possible, write assignments and directions on the blackboard or distribute mimeographed directions to the class. If assignments are given orally, a hearing student may be asked to take notes for the hearing impaired child.

- Ask the handicapped child to repeat or explain class material to make sure he/she has understood it. Embarrassed by their handicap, many hearing-impaired children learn to nod affirmatively when asked if they understand, even though they may not have assimilated the instructions.

- If the child has a hearing aid, become familiar with its operations and ask the child or the special teacher to demonstrate it to the class. The child should assume responsibility for the care of the hearing aid; however, it is recommended that the teacher keep a supply of batteries, supplied by the parent, for the aid if needed.

- Maintain close contact with the other professional personnel who have responsibility for the child's education. If possible, exchange visits with the special class teacher or therapist on a regular basis to observe the child in his/her other educational setting.

No matter what type of programming is utilized, it is important to remember that both the deaf and hard of hearing students need programs which are systematic and delivered in the least restrictive appropriate environment. These students do not learn abstract language skills through imitation or incidental learning.

A. Academic:

Programming must take into consideration that most hearing handicapped students are deficient in language. The goal of teaching in each of the subject areas should be that of concept formation. To assist the student in an academic area, programmed instructional materials, multi-media materials, and high interest, easy-to-read materials may be facilitative. Auditory training experiences and activities are very important. Whenever possible visually based materials should be used. Project STEP has been successfully utilized with hearing handicapped students.

B. Social:

Hearing handicapped students learn appropriate social behaviors only when they are deliberately sequenced into the learning program. Therefore, the program should emphasize being and interacting with others. It is important that hearing handicapped students interact with others with similar handicaps and with normal hearing individuals. Basic social amenities should be taught through systematic instruction.

C. Language:

Acquisition of some form of language, i.e., written, spoken or manual, is essential if hearing handicapped students are to acquire the basic competencies needed to function independently as adults. A support speech person will be an integral part of the hearing handicapped student's program. This person and the classroom teacher should work together to coordinate a total program of language acquisition for the hearing handicapped student.

D. Physical:

Hearing handicapped students do not usually have physical needs that differ from other students except some may lack physical endurance. Because these students have not always been allowed the opportunity to participate in physical activities, they and their peers may need guidance in helping the hearing handicapped integrate into all physical activities where their impairment does not pose a special danger to themselves or others.

## Deaf-Blind

### I. Definition

"Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children. (§ 121a.5(b)(2))

### II. Possible Referral Characteristics

Children and youth who have been diagnosed as deaf-blind by medical doctors will be afforded all procedural safeguards granted to any exceptional child, including assessment, an IEP, and placement based on the recommendations of a placement team. The free, appropriate public education will be delivered in the facility selected by the placement team, and ongoing communication will be maintained between the facility and agency staff members. Primary responsibility for the educational program of any exceptional child placed in any program remains with the Agency that is paying the education costs.

## Homebound or Hospitalized

Homebound and hospitalized instruction is not listed as a primary handicapping condition in PL 94-142 regulations. It is included here for clarity in definition and eligibility for services in the home or hospital for eligible exceptional students.

### I. Definition

Any exceptional student who, because of the severity of the illness, injury, or the nature and/or extent of his/her handicapping condition, requires homebound or hosptial instruction shall, upon approval, receive educational services during the academic year within his/her facility of confinement for as long as the handicapping condition prevents the student from safely and adequately attending school.

### II. Assessment

A statement by the attending physician as to the student's diagnosis, reason for confinement, and approximate length of time such services will be needed, must be submitted to the principal or other Agency designee prior to approval. Homebound and hospital instruction is then provided upon approval by the principal or other designee of the school in which the child is enrolled. In cases in which the child is not enrolled in a BIA school, application is made to the individual with administrative responsibility for special education in the Agency of which the child is a legal resident. A complete evaluation for the suspected handicap shall be given to the student as defined under the relevant category.

### III. Programming Considerations

Students shall receive a minimum of twelve hours of instruction per month, with a minimum of three hours each week to be counted for full attendance. Days and times should be distributed to the best advantage of students and teacher. Provision of homebound instructional services is subject to reevaluation of eligibility. For students receiving services due to an illness or injury which extends for an anticipated period of three months, reevaluation in terms of continued eligibility and/or referral to more appropriate services is required.

The instructional program is based upon the individualized education program. Homebound/hospital teachers in cooperation with special education school personnel designated by the principal design a program adapted to the needs of the child. For exceptional students who are receiving homebound/hospital services due only to illness or injury, the instruction continues to follow the IEP. The teacher will promote social and emotional adjustments while the student is absent from his/her peer group to prepare the student for reentry into school when physical conditions permit. For those students that are receiving homebound/hospital services due to the nature and/or extent of their handicapping condition, the instructional program will be designed to meet the specific needs as indicated on the IEP. Some students receiving homebound/hospital services may be at the self-help level and assistance and training may also be provided to the parents. The design of all students' programs will be based upon the results of the comprehensive evaluation of the student using the primary handicapping condition as the basis of the decisions.

# Mentally Handicapped

## I. Definitions

"Mentally Retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance. (§ 121a.5(b)(4))

The educable mentally handicapped child fits the above definition from PL 94-142 (the standard definition, which was developed by the American Association on Mental Deficiency), but can still be expected to achieve at a level one-half to three-fourths that of the "normal" child. Educable mentally handicapped youngsters grow into adults who are able to hold jobs and manage their affairs, if they receive appropriate educational support during their school years. Students classified as educable mentally handicapped should be taught the academic skills that other children learn although their progress will be slower.

The trainable mentally handicapped child also fits the standard definition. Unlike the educable mentally handicapped child, who is often identified only upon entry into a formal education program, the trainable mentally handicapped child is identified early by the family and community members because of the child's obvious developmental lag and inability to adjust to people and to situations. Youngsters in this category will achieve at a rate one-fourth to one-half that of "normal" students. Although they will never achieve complete independence they can be trained through rote learning and have the potential for self-care and social adjustment.

## II. Possible Referral Characteristics

### A. Intellectual:

- subaverage intellectual ability; performs poorly on verbal and nonverbal intelligence tests
- difficulty performing abstract processes; conceptualization, generalizability, transfer
- slowness in maturation of basic intellectual functions; memory, imagination, creativity

B. Academic:

- subaverage learning performance in reading, arithmetic, and spelling

- less able in activities requiring reading and listening comprehension, following complex directions, gaining insight into problem situations, generalizing from rules and principles

- less able in written communication than oral communication

- does not learn from incidental exposure to experience

- has short attention span

- displays deficiencies in short-term memeory

C. Behavior:

- lack of social competence

- has difficulty comprehending social situations

- low tolerance for frustration

- exhibits immature social behavior

- has poor self-concept

- displays fear of failure

D. Language:

- below average for age in language skills

- has limited vocabulary

- delayed speech and language

- displays articulation disorders

- limited written communication skills

- physical development proceeds at slower rate and continues for a longer period of time

III. Preassessment Information

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems and adaptive behavior

C. Reading skills

D. Observation of the child

E. Review of anecdotal records

## IV. Assessment

An evaluation, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary language shall be determined. If the language is other than English, an evaluator shall be used who is fluent in the child's primary language and English, or an interpreter shall be used to assist in language and testing. Test instruments should be used which do not stress spoken language and which are considered valid and reliable performance measures of functioning. Signed parent consent shall be obtained prior to the assessment.

A. The reason for referral

B. Complete psychological evaluation, including a comprehensive intellectual assessment test. This testing must be conducted by a qualified professional, and may include:

Intelligence Testing

Best practices dictate that only a WISC-R or Stanford-Binet multifaceted I.Q. test be used to determine intelligence. Since neither test can be deemed culturally fair for native Americans from reservation settings, adaptive behavior should be the key component. Some tests that can be used to measure intelligence follows:

WISC-R
Stanford-Binet
Leiter Scales
Slosson Intelligence Test
Hiskey-Nebraska
SOMPA

C. Achievement Assessment

Peabody Individual Achievement Test
Wide Range Achievement Test
Durell Analysis of Reading Difficulty

KeyMath Diagnostic Arithmetic Test
Spache's Diagnostic Reading Scales
Woodcock Reading Mastery Test

D. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

Before determining that a child is eligible for services for the trainable mentally handicapped, the team must secure validated developmental data from the family and/or community that obvious deficits in adaptive behavior have been noted from the child's earliest days. Lack of such validation disclaims either the severity of the handicap or the accuracy of the diagnosis.

Since adaptive behavior scales reflect the dominant culture in which they were designed care should be taken when using them with culturally different groups of students. One appropriate technique is to use structured behavior observation skills to informally compare the adaptive behavior of each student with same-age peers from similar settings.

Adaptive Behavior Rating Scales

American Association on Mental Deficiency Adaptive Behavior Scale: Public School Version
Child Behavior Rating Scale
Devereaux Elementary School Behavior Rating Scale
Devereaux Adolescent Behavior Rating Scale
Camelot Behavioral Checklist
Vineland Social Maturity Scale
Classroom, Home, Playground Observations
Anecdotal Records

E. Pre-Vocational

Vocational Education for Special Education Project II: Interest Scramble; Enabling Skills
Adaptive Behavior Assessment (see tests under adaptive behavior)

F. Vocational

Job Demands and Physical Capacities Appraisal
Testing, Orientation, and Work Evaluation in Rehabilitation (TOWER)
Jewish Employment and Vocational Service (JEVS)
Singer/Graflex System

For additional sources see: Vocational Preparation of Retarded Citizens. Don E. Brolin, Columbus, OH: Charles E. Merrill, 1976.

G. Educationally relevant medical findings

H. Educational history of the child including documentation of efforts to educate the child in the regular classroom

I. Types of tests administered to the child and results of such tests (A child properly classified as mentally handicapped will show a flat profile across all areas tested.)

J. A recommendation of specific goals and instructional objectives based upon the current levels of performance needs

K. An educational evaluation.

The team responsibility for determining eligibility (and classification) for any exceptional student is demanding. Because children who are seriously emotionally disturbed or who have specific learning disabilities may appear to be mentally handicapped, it is critical that the team collects and documents unquestionable evidence that its eligibility determinations are correct.

## V. Programming Considerations

### Apply Learning Principles

Mentally handicapped students need a program of systematic instruction based upon sound learning principles and techniques which facilitate learning, such as the following:

- Emphasize concrete, meaningful content in initial instructional presentations.

- Insure mastery of new material through overlearning and repetition.

- Provide the learner with methods of verbal mediation, which is extremely beneficial for learning and recalling associations between pairs and items.

- Increase attention initially by highlighting relevant dimensions and by minimizing unnecessary stimuli.

- Promote an atmosphere of success on which to base future learning tasks.

- Incorporate incentives into all learning arrangements.

- Teach sequenced information from the easy to the difficult.

- Use a variety of methods to present materials as well as to reinforce acquisition.

## Reading

In reading basic emphasis is placed on developing a survival vocabulary so the individual can recognize signs and labels. For the individual capable of achieving at a higher level, reading instruction is provided. Programmed readers which provide immediate feedback are appropriate for retarded learners. High interest, easy-to-read books keep the student interested in reading. The primary purposes of learning to read are to assist the individual in being able to function in an adult world and for recreation.

## Arithmetic

Basic skills in understanding number facts and their uses, skill in measurement, telling time, managing money, etc. are the concepts of concern in arithmetic. All concepts taught should be of practical use in daily living.

## Language arts

The basic skills of writing, speaking, and listening are emphasized.

## Social studies

Emphasis is placed on citizenship, recognition of community resources, utilization of community resources, being able to use a newspaper, and being aware of the everyday world.

## Science

Skills taught in this area include the environment, nutrition, hygiene, weather conditions, etc.

## Focus on Programs

In order to properly address programming considerations, it is necessary to consider the degree of retardation. This does not mean a program is designed to meet the degree of retardation, rather, that a program is designed in accordance to the student's ability to learn to function in adult life. The focus of the programs for educable mentally handicapped students is on developing:

- basic academic skills
- social competency
- personal adjustment
- occupational adequacy

The primary objective of the educational program is to assist the educable mentally handicapped individual in becoming a well adjusted and employable adult. This means the teaching of basic survival skills and skills which enhance personal social development.

Programs for the trainable mentally handicapped emphasize:

- language development
- self-help skills
- socialization

The instructional program is planned to focus on the development of practical skills. These students will need training in self-help skills such as learning to dress and care for their bodily needs.

Language development facilitates the student in being able to communicate with others. Development of appropriate and functional social skills are important as the students will need to know how to work and play with others and how to function in a social situation.

The goal of the instructional program for both levels is primarily the same, i.e., the development of maximum independence as an adult. To ensure this goal, retarded individuals, regardless of degree of the mental handicap, need to acquire skills which relate to successful employment and other life skills. Prevocational and vocational training are essential components of the instructional program if these individuals are to acquire the skills necessary for successful employment. Skills such as dependability, promptness, courtesy, willingness to accept and follow directions, and productivity are constantly emphasized to prepare the individual for employment.

A. Academics:

As stated before the basic goal of the academic program is to prepare the individual to become a well-adjusted and employable adult. Educators need to have this goal constantly in mind when developing the instructional program. The academic subjects are only one aspect of the program and the objective is to keep the content of the school subjects geared to meeting the ultimate goal of the instructional program for each individual student.

B. Social:

The emphasis is toward assisting the student in acquiring the ability to cope with persistent life situations and to interact effectively with others in a variety of situations. Social skills should be taught as a component of other activities through participation, interaction, use of appropriate social behavior for the situation, etc.

A low self-concept is characteristic of most mentally handicapped individuals. Self-concept is enhanced when a student has developed a sense of confidence and security. Experiences and exposure throughout the entire school setting should facilitate a feeling of self-confidence. These students need to learn ways in which they can develop a basis for self-appraisal which leads to feelings of success.

C. Language

The principal goal of the language program is the development of communication skills which contribute to independence. The focus is placed on the development of a usable and effective means of communicating. This involves developing receptive and expressive skills needed in everyday performance. Skills which are emphasized include listening, understanding concepts, appropriate responses, maintaining eye contact, etc.

D. Physical:

The physical education program for the mentally handicapped should concentrate on body movements and body mechanics which increase the number of activities in which the individual can participate.

Both gross and fine motor coordination are a part of the training program. Emphasis is placed on experiences which facilitate the development of perceptual motor ability. Another aspect of the physical education program is that of developing a physically fit body.

The framework of 12 persisting life problems provides another way to look at programming for the mentally handicapped. The curricula would be geared to helping students learn how to meet problems that occur in these areas. For the trainable mentally handicapped, emphasis would be on rote learning and acquisition of self-help and social skills. The curricula for educable mentally handicapped children and youth would incorporate academic skills (reading, writing, mathematics, etc.) into lessons in the areas. The 12 persisting life problem areas are:

1. Health
2. Safety
3. Communication
4. Citizenship
5. Homemaking--family living
6. Emotional growth
7. Mobility, travel
8. Art and music
9. Leisure time activities
10. Vocational
11. Time and money
12. Independence

## Multihandicapped

### I. Definition

"Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children. (§ 121a.5(b)(5))

### II. Possible Referral Characteristics

For an individual to be classified as multihandicapped he/she must exhibit two or more handicapping conditions. Referral should be based upon the observation of a combination of the characteristics outlined in the various handicapping conditions. For example, a student who is mentally retarded may have related problems in vision, hearing, speech, or other health impairments such as seizures, etc. Reference should be made to the definitions and referral characteristics cited under each category, if a student is suspected of possessing a combination of handicapping conditions.

### III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation of the student

E. Review of anecdotal records

### IV. Assessment

An evaluation by a multidisciplinary team, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary language shall be determined. If the language is other than English, an evaluator shall be used who is fluent in the child's primary language and English, or an interpreter shall be used to assist in language and testing. Test instruments should be used which do not stress spoken language and which are considered valid and reliable performance measures of functioning. Signed parent consent shall be obtained prior to the assessment.

A. The reason for the referral

B. If the multihandicap includes a physical handicap, medical certification which establishes the severity and implications of the impairment shall be obtained.

C. Educationally relevant medical findings

D. Educational history of the child including documentation of efforts to educate the child in the regular classroom.

E. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

F. Types of tests administered to the child and the results of such tests.

G. Recommendation of specific goals and instructional objectives based upon the current levels of performance needs.

H. An educational evaluation

I. If a mental handicap is suspected as being one of the handicaps present in the multihandicapped, see assessment procedures for that category.

J. If the child exhibits characteristics of a specific learning disability as one of the multihandicaps, see assessment procedures for that category. The following tests may also be administered as part of the assessment package:

   -Oseretsky Tests of Motor Proficiency

   -Purdue Perceptual Motor Survey

## V. Programming Considerations

An individual program that is tailored to the unique needs of the learner is a necessity for every handicapped learner; this must be reemphasized for the multihandicapped individual. In this section, general considerations for meeting these special needs are mentioned. In addition, persons responsible for program planning should consult the Programming Considerations in the other handicap categories. Prevocational and vocational programming is essential for most multihandicapped students. Bigge and Siruis suggest the following considerations when working with the multihandicapped child.

## Communication

-Assume--until evidence proves otherwise--that students with unintelligible speech understand at a higher level than they can express, and treat and teach them accordingly.

-Invite students who cannot talk to show how they answer yes, no, and I don't know.

-Invite students to demonstrate for you all the ways they know for letting people know what they want to say.

-Teach the most vital communication skills to students for whom learning communication skills is extremely difficult. Two important skills are using gestures to express a need to be taken to the bathroom, and smiling and saying "hi" as a greeting.

-Invite students who talk to you but cannot be understood because of unintelligible speech to:

> "Please repeat that again."
> "Please say that in another way."
> "Show me by gestures or pointing."
> "Write, type, or point to the alphabet letters or words."

-Repeat to students what you think they tried to communicate in order to clarify. "Is that exactly correct?"

-Find ways for students who cannot speak or write intelligibly to demonstrate increasingly difficult thinking skills. For instance, a student might classify and reclassify objects, pictures, or words mounted on blocks of cardboard by pushing them into groups.

-Directly or indirectly encourage students to improve their speech as they study phonics, spelling, reading, and dramatic play.

- Give students time to respond.

- Find ways individuals who cannot talk can contribute to class discussions.

- Ask parents or speech and langauge specialists how to help students improve their speech and expressive language skills.

## Learning

- If children understand, ask them what kind of adaptations, special equipment, or teaching procedures work best for them.

- Ask parents, therapists, or special education specialists what, if any, special devices or procedures are needed to help children; for example, secure papers to desks with masking tape to keep them from slipping.

- Ask parents, therapists, or the child what safety restrictions or cautions are necessary. Help the disabled students increase their responsibility for their own health and safety.

- Unless otherwise recommended, give students the opportunity to do what their peers do even though they might walk awkwardly, fall often, or seem uncoordinated.

- Realize that illegible writing and slowness in written or oral answers may not indicate that the students do not know their lessons.

- Find ways for disabled students to evaluate their performances objectively so they will not be unrealistic about what they can learn and do.

- Include all students in group learning experiences even if you have to phrase some questions so disabled students can give yes or no answers or assist them physically.

## Mobility

- Ask disabled students, their parents, or therapists to demonstrate all the ways that the students can move from place to place.

- Ask disabled students, their parents, or therapists when and how students should be physically assisted.

- Have volunteers assist with physical management so whenever possible disabled students can go on field trips, participate in special projects.

- Arrange for elimination. . . of architectural barriers.

## Self-help

- Encourage students to complete as much of every self-help task as possible.

- Find what steps or tasks students cannot do and see if those parts can be taught with or without adaptation of material, equipment, or procedures.

- Openly discuss any uncertainties as to when or how to aid a disabled student. You could say, "I'm not sure if you would like my help. Would you?"

## Attitudes

- Ask doctors or parents about a child's understanding of his own illness and disabilities. Find out how they want teachers to respond to questions by the child and his peers.

- Help nondisabled students and adults understand that such characteristics as drooling, unusual ways of talking, and physical awkwardness cannot be helped and are not to be ridiculed.

- Prepare yourself and class for helping students with special needs. For example, provide a rest period for students who tire easily, remove furniture near a student having a seizure, arrange for a nondisabled child to make carbon copies of class notes for a classmate who cannot write.

- Treat ill or disabled students as normally as possible; do not give them better grades than deserved.

- Prepare classmates for students' return after long absences because of illness or accident (a student might be bald or wear a wig, because of cancer treatment; someone might have a missing arm or leg, or a body cast).

- When organic deterioration affects learning, consider keeping the student with his/her peers even though he/she cannot continue to keep up in academic or physical activity.

- Support the possible decision of children with potentially terminal diseases to cut the amount of school work and physical activities undertaken because of frequent absences, limited energy, or personal attitudes.

Resources

- Ask the parent, school administrators, or special educators to suggest resources if and when additional help or ideas are needed. Whenever possible use disabled persons themselves as resources for ideas on how they can be helped.

- Find ways disabled students can become resources for nondisabled persons.

- Train and use volunteers to aid student learning and increase the independence of students who need extra help.

- Use peers as teachers and helpers of their handicapped classmates.

- Read articles and books on education of individuals with physical handicaps.

# Orthopedically Impaired

## I. Definition

"Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures). (§ 121a.5(b)(6))

## II. Possible Referral Characteristics

The referral characteristics for the orthopedically impaired student are mainly physical. The characteristics may include paralysis, unsteady gait, poor muscle control, loss of limb, etc. The impairment can be severe enough to impede the expressive language of the student. It is important to note that physical impairment does not automatically mean the child should be referred for consideration of special education and related services. It is when the impairment affects the child's educational performance that a referral should be made.

Eligibility should be approached in steps.

A. Once the orthopedic handicap has been established, all barriers to the child's functioning must be eliminated. Many times the educational deficit will not exist once the barriers to school participation have been eliminated. (See Procedural Safegards section for information on access to programs.)

B. Some orthopedially impaired students with full access to their program will continue to exhibit an educational deficit. This may include such things as impaired, or lack of, two-way communication, an academic deficit as a result of the orthopedic impairment and not as a result of the presence of barriers, or perceptual and motor deficits that attribute to the academic and/or language deficit as a result of the orthopedic impairment.

In eliminating the barriers to the child's participation in the regular class, items such as the following should be considered: physical access to the classroom, page turners, book holders, standing boards/desks, large desks to accommodate book holders, access to restroom facilities and drinking fountains, etc.

III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation

E. Review of anecdotal records

IV. Assessment

An evaluation, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary language shall be determined. If the primary language is other than English, an evaluator fluent in the child's primary language and English, or an interpreter shall be used to assist with language and testing. Test instruments shall be used which do not stress spoken language and which are considered valid and reliable performance measures of functioning. Signed parent consent shall be obtained prior to the assessment.

A. The reason for referral

B. Medical certification that establishes the severity and implications of the orthopedic impairment

C. Educationally relevant medical findings

D. Educational history of the child including documentation of efforts to educate the child in the regular classroom.

E. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

F. Types of tests administered to the child and results of such tests.

G. Recommendation of specific goals and instructional objectives based upon the current levels of performance needs.

H. An educational evaluation.

V. Programming Considerations

Programming considerations under multihandicapped speech impaired, specific learning disabilities and mental retardation should be reviewed in determining the programming needs of the orthopedially impaired. The physical education program may need to be adapted to meet the needs of the orthopedically impaired student; for some students in this category, adaptive physical education may be the only special education program required.

# Other Health Impaired

## I. Definition

"Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance. (§ 121a.5(b)(7))

## II. Possible Referral Characteristics

Referral characteristics for the "other health impaired" student do not fall into specific intellectual, academic, behavioral, language or physical categories. A student may have an "other" health impairment of which the teacher is unaware because the indicators of the other health impairment may not be observable. Academically the student may exhibit an educational deficit. The educational deficit may be attributed to: (1) long periods of absence due to the health impairment, (2) inability to attend to the task for the same length of time as his/her peers due to the other health impairment and/or as a result of medication being taken for the impairment, (3) inability to attend school for more than a few hours per day due to limited strength or vitality.

The other health impaired student may be brought to the attention of school personnel by teacher, parent, school nurse, counselor, or other persons with knowledge of the student's condition.

## III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation

E. Review of anecdotal records

## IV. Assessment

An evaluation, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary language shall be determined. If the primary language is other than English, an evaluator fluent in the child's primary language and English, or an interpreter shall be used to assist with language and testing. Test instruments shall be used which do not stress spoken language and which are considered valid and reliable performance measures of functioning. Signed parent consent shall be obtained prior to the assessment.

A. The reason for referral

B. Medical certification that establishes the severity and implications of the health impairment

C. Educationally relevant medical findings

D. Educational history of the child including documentation of efforts to educate the child in the regular classroom.

E. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

F. Types of tests administered to the child and results of such tests.

G. Recommendation of specific goals and instructional objectives based upon the current levels of performance needs.

H. An educational evalaution.

## V. Programming Considerations

In most cases the programming considerations listed under the categories of mentally retarded and specific learning disabilities will apply in part to these students. Please refer to those sections.

In addition, many other health impaired students may need major modification of their school day such as rest periods, shortened school day, etc.

## Seriously Emotionally Disturbed

### I. Definition

"Seriously emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree for a least six months which adversely affects the educational performance: (1) inappropriate types of behavior or feelings under normal circumstances; (2) general pervasive mood of depression or marked elation unrelated to circumstances; (3) chronic anxiety, abnormal fears, or physical complaints without organic basis; (4) markedly impaired ability to communicate with others due to lack of awareness of reality and an impaired ability to learn which cannot be explained by intellectual sensory, or health factors or an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (5) a constant and/or prolonged display of psychosomatic systems; or (6) early display of symtoms of social and emotional maladjustment that indicate the probability of future severe problems that would normally fall under this category.

(Note: The above definition is a combination of (§ 121a.5(b)(8), PL 94-142, a definition by Dr. Otho Hesterly, University of Arkansas Medical Center, and Navajo Area professionals.)

### II. Possible Referral Characteristics

Identification of seriously emotionally disturbed individuals is not a simple, clear-cut task since many variables enter into the identification process. Nearly all individuals at sometime or other display behaviors similar to thos displayed by disturbed individuals. However, there are ways in which behaviors of disturbed individuals differ significantly from those of the normal individual. These differences include:

- problems which are of long standing; they are not an isolated instance of behavior.
- the behavior is grossly inappropriate for the time and place in which it occurs.
- the severity of the behavior problems is indicated by:
    a. rate: how often it happens in a period of time;
    b. magnitude: force and determination with which the behavior is performed;

c. multiplicity: number of different behaviors involved; thru observations indicate progressive deterioration.

A. Intellectual:

- intellectual functioning is not as strong an indicator as other referral characteristics

B. Academic:

- often quite seriously academically retarded
- fails to acquire skills
- severe learning deficiencies as compared to the chronological age educational expectancy
- nonattending to class instruction; short attention span
- little motivation for academic learning

C. Behavior:

1. Moods
    - laughs, cries, or becomes very angry without apparent cause at times when others would show different reaction
    - looks depressed almost all the time without regard to circumstances
    - daydreams; sits with a vacant expression, doing nothing productive
2. Responses
    - talks inappropriately, without regard for the questions or answers of others
    - shows extreme interest in morbid, obscure, or gruesome events
    - is in constant motion; compulsively manipulates objects, moves about the room excessively
    - talks incessantly; frequently talks without permission or interrupts conversations

- does not seem to learn from experience; behavior does not improve with usual disciplinary methods

- acts impulsively and show poor judgment; does not consider or understand consequences of own behavior

3. Neurotic complaints

   - complains of feeling uneasy or anxious most of the time without apparent cause

   - complains of being afraid of something(s) that the majority of people do not fear

   - is overly suspicious or jealous of others

4. Interpersonal relationships

   - impaired ability to build or maintain satisfactory interpersonal relationships with peers and teachers

   - cannot make or keep friends

   - repeatedly engages in fights or misunderstandings

   - cannot work with others in learning situations

   - cannot play with others cooperatively

   - cannot communicate with or respond to others due to an apparent lack of awareness of the real world

5. Self-concept

   - has slovenly, unkempt appearance

   - habitually sucks thumb, fingers

   - exhibits repetitive, stereotyped, or self-injurious behavior

   - fearful of new situations, unwilling to attempt new or difficult tasks

   - shows extreme negative reaction to minor failures

   - unable to evaluate behavior realistically; brags or puts down own accomplishments

6. Another way to look at the behavioral characteristics of seriously emotionally disturbed children is pro-

vided by James. M. Kauffman[1]. Kauffman reports that if 3% of the total population of children is served as behaviorally or emotionally handicapped, that 3% would be diveded into 1/3 asocial/aggressive/ 1/3 inadequate/immature; and 1/3 psychologically disturbed/ personality problems. Using Kauffman's categories, examples of behaviors of emotionally disturbed children and youth, on a continuum from mild to severe, follow:

| a. | Asocial | Aggressive |
|---|---|---|
| Examples of Problem Areas: | This pupil gets into fights or quarrels with other pupils more often than others. | This pupil behaves in ways which are dangerous to self and to others. |
| Examples of Behaviors in Problem Area: | | |
| Severe | This pupil bullies others--hurts another child daily. Initiates and encourages fights regularly. Mocks and spits at teacher, laughs at authority. | This pupil is sadistic and cruel to children and animals. This pupil carries weapons and threatens violence. Hurts others often. Self-mulilating behavior. |
| Moderate | Fights regularly, acts tough. Must have own way or sulks. This pupil is constantly teasing others but stops short of fighting. Has many enemies from fighting and quarreling. Hostile. | This pupil runs, hits, grabs, pushes, jumps on people and is aggressive and uncontrolled. This pupil is caustic, acts impulsively and deliberately disobeys safety rules. Destroys property often. |

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[1] James M. Kauffman, University of Virginia. Paper presented at topical conference, "Emotionally Disturbed Behaviorally Disordered Children and Youth: Who are They?" Charlottesville, Virginia, February 23, 1979. Sponsored by the Advanced Institute for Trainers of Teachers for Seriously Emotionally Disturbed Children and Youth, Frank Wood, Director.

| a. cont. | Asocial / | Aggressive |
|---|---|---|
| Mild | Doesn't pick fights but is regularly involved in them. Has many enemies from teasing. Not liked. Won't follow rules on playground. Kicks the ball away if pupil does not get his/her way. | This pupil is careless about using or moving equipment. Not aware of hurting others by playing too rough. Very hyperactive on holidays and special occasions. |

| b. | Inadequate / | Immature |
|---|---|---|

Examples of Problem Areas:

| | | |
|---|---|---|
| | This pupil makes immature or inappropriate responses during normal school activities. | This pupil has no enthusiasm for school and does not respond to or maintain interest in learning tasks. |

Examples of Behaviors in Problem Area:

| | | |
|---|---|---|
| Severe | This pupil has daily temper tantrums. Cries easily and often frustrated and angered by other children and circumstances. Extremely sensitive. Extremely fearful. | This pupil has a poor attitude toward school and is interested only in play. This pupil is far behind in all work and appears to have given up. |
| Moderate | This pupil always talks or acts "babyish" when he or she needs help from the teacher. This pupil will not assume responsibility, always blames other children. Lies to parents about treatment at school. | This pupil has only a very superficial interest in school Never finishes assignments. Parts of assignments done sloppily, few correct answers but can do them correctly on a one-to-one basis. |
| Mild | High shrill laughter, for no apparent reason, out of seat constantly. Stares into | This pupil is rather slow, finishes work with help. Often loses interest and |

| b. cont. | Inadequate / | Immature |
|---|---|---|
| Mild (cont.) | space, daydreams constantly. Talks out constantly. | has to be put back on task. |

| c. | Psychological Disturbance / | Personality Problems |
|---|---|---|
| Examples of Problem Areas: | | |
| | This pupil becomes sick or upset or may stay home from school when faced with a difficult situation. | This pupil seems unhappy or depressed. |
| Examples of Behaviors in Problem Area: | | |
| Severe | This pupil has frequent absences, tardiness and upset stomachs during normal school situations. Cries or complains of illness during normal tasks. Psychosomatic symtoms. | Totally withdrawn. Scowls and whines about everything. Cries daily. Extremely apathetic, mute. |
| Moderate | This pupil might choose to stay home in the afternoon if the morning has been difficult. This pupil often stays home when something new is to be introduced. | This pupil is a constant worrier. This pupil is ill-at-ease and self-deprecating. Alone mostly. Never initiates interaction. |
| Mild | This pupil is very quiet, becomes agitated and fearful when called on to answer a question. This pupil makes excuses of sickness or injury to escape certain school activities. | This pupil is very quiet but participates spontaneously. Responds to school without joy or displeasure. Unhappy, without friends. |

D. Language:

- does not speak or speaks only when spoken to
- speaks with marked dysfluency; stutters, clutters, or otherwise interrupts the flow of speech
- uses primarily jargon, neologisms, profanity, or other speech inappropriately for a context

E. Physical:

- complains of physical pain, sensations of discomfort or impairment of function of the body without organic basis
- engages in repetitive, stereotyped motor behavior, such as tics, nailbiting, or rocking
- overcome frequently by drowsiness or sleep during the day

III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation of the student

E. Review of anecdotal records

IV. Assessment

An evaluation, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary language shall be determined. If the language is other than English, an evaluator shall be used who is fluent in the child's primary language and English, or an interpreter shall be used to assist in language and testing. Use test instruments which do not stress spoken language and which are considered valid and reliable performance measures of functioning. Signed parent consent shall be obtained prior to the assessment.

A. The reason for referral

B. Educationally relevant medical findings

C. Educational history of the child including documentation of efforts to educate the child in the regular classroom

D. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

E. Types of tests administered to the child and the results of such tests.

F. A recommendation of specific goals and instructional objectives based upon the current levels of performance needs.

G. A psycho-social-education evaluation is required before a team may classify a student as emotionally disturbed. One member of this team must be a certified school psychologist, a licensed psychologist, a licensed psychiatrist, a certified educational diagnostician or a certified social worker. Because many handicapped children have a secondary or overlying emotional handicap, in classifying a child as primarily emotionally disturbed, it will be necessary to determine that:

   1. The child is not behaving as a behaviorally/emotionally handicapped person because of vision or hearing impairment.

   2. The child is not primarily in one of the other handicapping conditions. (Note: any appropriate team can determine that a child is behaviorally/emotionally handicapped as the primary handicapping condition without regard to other handicaps the child may have. This should be documented in the child's records.)

**Every child classified as emotionally disturbed will have assessment data in his/her records in each of the following areas:**

1. **educational behavior**
2. **adaptive/social behavior**

3. personality/intrapersonal
4. disclaimers for:
    a. other handicaps
    b. intellectual impairment
    c. injury, trauma, disease
    d. socio-economic status, cultural and familial issues
    e. system/environment, i.e., poor teacher, family reputation, etc.

(Note: These disclaimers can be handled through cumulative records, interviews and observations; each area does not require individual assessment. Many emotionally disturbed children have been found to have vision and hearing problems; particular emphasis should be placed on dealing with this issue.)

Required Areas of Assessment

1. Educational Behavior

Types of information which may be included:

- classroom observation
- teacher inventories
- teacher interviews
- cumulative records
- formalized checklists
    Walker Problem Behavior Checklist
    Devereux Child Behavior Rating Scales
    Devereux Adolescent Behavior Rating
    Lambert Pupil Behavior Rating Scale
    Adaptive Behavior Scales
    Jesness Inventory
    Etc.

Nadine Lambert, in The Pupil Behavior Rating Scale, lists 11 critical items for this area:

- Pupil fighting and quarreling
- Not following directions
- Immature or inappropriate responses
- Too dependent on teacher, needs constant supervision
- Has to be coaxed or forced to work or play
- Easily distracted
- Behaves dangerously
- No enthusiasm for school
- Difficulty in learning skills
- Sick or upset often
- Unhappy or depressed

## 2. Adaptive/Social Behavior

Types of information which may be included:

- child's past and present patterns of interaction with peers, family, teachers, adults, etc.
  - teacher inventories
  - teacher checklists
  - family interviews
  - case histories
  - child interview
  - sociometric devices
  - interaction scales
- adaptive behavior functioning, survival skills in community, home, school.
  - parent interview
  - court records
  - anecdotal records
  - adaptive behavior scales

## 3. Personality/Intrapersonal

Types of information which may be included:

- child's perception of self, needs and the world
- child's behavior which may reflect deviance, bizarreness, inconsistencies, confusion, disorientation:
  - interviews
  - observations
  - case history
  - projective personality, self-concept tests
  - nonprojective personality, self-concept tests

## 4. Disclaimers

Types of information which may be included:

- other handicaps
- intellectual impairment
- injury, trauma, disease
- socio-economic status
- cultural familial issues
- system/environment issues
  - previous testing
  - medical history
  - metabolic, allergy, specialized lab tests
  - teaching/faculty competence

Note: educational behavior is a subset of adaptive/ social behavior, but is the most critical area of concern. Many assessment instruments comfortably address issues across these four areas of assessment.

## Tests

The following list of tests is provided to stimulate ideas and thinking. The tests are not required and clearly many of these instruments are not readily available in the Agency or school. This list was compiled from the most highly recommended tests in the Mental Measurements Yearbook. Few tests on the market survive the scrutiny of validity, reliability and usefulness as dictated by psychometrics research; the following comprise a few of the survivors.

### 1. Educational Behavior

Pupil Behavior Rating Scale, grade K-3, grades 3-7, Publisher's Test Service
Walker Problem Behavior Checklist, grade 4-6, Western Psychological Services
Devereux Child Behavior Rating Scales, ages 8-12, Devereux Foundation Press
Devereux Adolescent Behavior Rating, ages 13-18, Devereux Foundation Press
Jesness Inventory, Consulting Psychologist Press

### 2. Adaptive/Social

Adaptive Behavior Scales, ages 3-12, ages 13-adult, American Association on Mental Deficiency
Burks Behavior Rating Scales, preschool, kindergarten, grades 1-8, Arden Press
Chapin Social Insight Test, ages 13-adult, Consulting Psychologists Press
Fundamental Interpersonal Relations Orientation-Behavior (FIRO-B), grades 9-16, Consulting Psychologists Press
The Manchester Scales of Social Adaptation, ages 6-15, NFER Publishing Company, Ltd.
Parent-Adolescent Communication Inventory, grades 9-12, Family Life Publications Inc.
Vineland Social Maturity Scale, ages 0-adult, American Guidance Service

### 3. Personality/Intrapersonal

California Psychological Inventory, ages 3-adult, Consulting Psychologists Press
Depression Adjective Checklists, grades 9-16, Educational and Industrial Testing Service

Edwards Personality Inventory, grade 11-16,
Science Research Associates
Junior Eysenck Personality Inventory, ages 7-15,
University of London Press, Ltd.
Eysenck Personality Inventory, grades 9-16,
Educational and Industrial Testing Service
Tennessee Self-Concept Scale, ages 12 and over,
Counselor Recordings and Tests

## V. Programming Considerations

There is not one correct way to program for seriously emotionally disturbed students. Most teachers have received training which is underpinned by a particular theory, i.e., psychoanalytic, humanistic, etc. Regardless of the theory, the teacher must be aware of various approaches which may be realistically and effectively used in the classroom. For the seriously emotionally disturbed student to succeed, a sound educational and social program must be provided. The attempt to increase both behavioral and academic performance is grounded in an educational plan which provides growth through remediation of social, emotional, and academic performance. To accomplish this, individualized and sequential programming techniques must be utilized.

Generally, the mild-to-moderate behaviorally/emotionally handicapped child does not benefit from service in the resource room. These children should be carried on the resource teacher's roll book, but should be served by the regular teacher and resource teacher in the regular setting. The moderate-to-severe child probably cannot show change without extended resource or self-contained service.

It is recommended that, whenever possible, regularly scheduled programming conferences be held involving the school personnel serving the seriously emotionally distrubed student and a psychologist, psychiatrist, or supervised psychological examiner who has worked with the student(s). This related service can provide the needed support to school personnel in developing a comprehensive program for the student.

Knowledge and an understanding of behavioral principles as they apply to the management of students are essential to the teacher of seriously emotionally disturbed students. The following list of basic techniques are applicable to any class setting in which seriously emotionally disturbed students are being served.

## Techniques for Managing Misbehavior

1. Stop misbehavior in time.
2. Program for a variety of changes.
3. Make tasks clear and orderly and give the child time to complete one task before beginning another.
4. Comment positively when the student is attending appropriately to a task.
5. Establish limits and maintain consistent, clear ground rules.
6. Manage transitional times with quieting-down periods between two activities.
7. Set up activity centers a child can go to when he/she has completed required activities.
8. Set up a quiet corner where a child can go to be alone, to cry, or to calm down.
9. Plan for anger breaks; give a distraught, anxious, or angry student a chance to swim laps in a pool, run laps around a track, beat pillows, hit a punching bag, throw bean bags at a wall, pedal an exercise bike, jump rope, or pound clay.
10. Provide success; be sure the material is relevant, interesting, and appropriate for the child.

In addition to the techniques listed above, other procedures which might be included in programming are:

- carrels, for attending behavior
- contracts, for academics and behavior
- time-out areas
- contingency reinforcement programs

One last point to be made in programming is the importance of the relationship between the teacher and student. Teachers are responsible for establishing a student-teacher relationship for the purpose of enhancing academic and social growth in the children for whom they are responsible. This relationship is built upon mutual trust, concern, and support of the student's efforts. It is a relationship which is built over a period of time--time in which the student receives support, encouragement, and corrective feedback.

A. Academic:

Diagnostic procedures were utilized to determine the student's current level of functioning. Students who are seriously emotionally disturbed often possess wide discrepancies in academic skills. The basic academic skills such as reading, writing, spelling, arithmetic, etc., are taught while language and social-emotional responses are being learned. If the student is far enough advanced academically, materials used with normal learners can be utilized. For the student who has difficulty attending, the teacher may want to use some programmed learning materials which provide immediate feedback. Learning machines or multi-media materials may also prove beneficial in working with some seriously emotionally disturbed students. In reading, high-interest, easy-to-read books may be beneficial.

B. Social:

Social and emotional skills are best learned as a part of everyday interaction with teacher, peers, and other adults. The social-emotional part of the curriculum should be so interwoven with the rest of the curriculum, that it is impossible to segregate it as a proportional part. There is no substitute for a well-managed environment in which naturally occuring social rewards shape and maintain appropriate behavior. Commercial instructional materials which are designed to teach children social and emotional responses are available. These materials assist students in understanding themselves and how to get along with others. These materials include:

- The Self-Control Curriculum
- The Social Learning Curriculum
- Developing Understanding of Self and Others (DUSO)
- Toward Affective Development (TAD)

C. Language:

In order to develop an adequate langauge system, an individual must possess the necessary emotional stability to attend and respond to the environment. Many seriously emotionally disturbed individuals cannot or do not relate to individuals in the environment and the result may be serious language disturbances. For the more extreme problems, intervention techniques must be implemented which result in the student attending to the environment. In less serious cases of emotional disturbance, language development may be near normal. Then it is a matter of helping the student feel secure enough to communicate with other individuals in the environment. These students may also exhibit deviant vocal qualities. While some children may require the assistance of a trained language therapist, the development of language is also a responsibility of the classroom teacher.

D. Physical:

Systematic observation is essential in the delineation of physical difficulties. As these difficulties are identified, intervention techniques may be implemented. One approach to the elimination of inappropriate behaviors is the substitution of appropriate behaviors. The goal of the instructional program is to provide educational intervention strategies which eliminate or establish behavior to maximize academic achievement and behavior performance. The ultimate goal is that the student can be served in the regular classroom and be maintained by support services as an as-needed basis.

# Specific Learning Disability

## I. Definition

"Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (§ 121a.5(b)(9))

## II. Possible Referral Characteristics

Students identified as having a specific learning disability are noticed by way of any of a number of characteristics. As you review the referral characteristics, it becomes evident that almost every student displays some of these characteristics. However, the learning disabled student will possess and display a "clustering" of these characteristics. That is to say, as the student with a specific learning disability is observed, several of the listed characteristics will remain fairly consistent. The more severe the specific learning disability, the more characteristics which are identifiable for that individual. Characteristics may also appear in any combination for different students.

A. Intellectual:

- discrepancy exists between intellectual potential and academic performance
- bright but appears to be unable to learn

B. Academic:

- scores indicate inconsistency and great variability between expectancy and performance
- short attention span; unable to concentrate on any one task for very long
- easily distracted by irrelevant stimuli

- disorganized in books and materials
- unable to follow and understand class discussion, appears to be inattentive or daydreaming
- difficulty understanding meaning of time and facts to comprehend the requirements of completing assignments within a certain time

1. Reading
    a. visual processing
        - visual discrimination difficulties and confusion of similar letters and words
        - letter and word reversals and inversions
        - difficulty in following and retaining visual sequences
        - word substitution
        - distracted reading; skipping and jumping words
        - omission of words, phrases, and sentences
        - slow recognition of words
    b. auditory processing
        - difficulty in separating words into their component phonemes and syllables or in blending them into whole words
        - difficulty in spontaneous recall of sounds associated with letters and words
        - disturbances in auditory sequencing
        - general preference of visual activities over auditory tasks
2. Writing and Drawing
    - inability to form letters or digits correctly
    - difficulty in staying on or between lines
    - difficulty in judging how long or how tall a letter is

- difficulty in spatial organization; difficulty in identification or matching of shapes, rotation or distortion in drawing geometric designs
- reversal of letters and digits
- difficulty in discriminating left from right

3. Arithmetic

   - difficulty in associating the spoken form with the correct printed material
   - difficulty in learning the cardinal and ordinal system of counting (i.e., one, two, three, etc,; first, second, third, etc.)
   - difficulty in understanding the meaning of the process sign
   - difficulty in understanding the arrangement of numbers on a page
   - inability to follow and remember the sequence of steps used in various mathematical operations
   - difficulty with concepts of space, time, and distance

C. Behavior

- hyperactivity; constant motion, difficult to attend to any one thing, flits from one thing to another
- hypoactivity; quiet, daydreaming, phlegmatic behavior
- emotional lability; easily upset, nervous, low frustration threshold, rapid change from one mood to another
- impulsivity; not inhibited, acts without thinking
- distractibility; difficulty in attending to dominant stimuli, an abnormal fixation on unimportant details
- perseveration; attention becomes fixed upon a single task which is repeated over and over
- memory disorder; auditory or visual, has difficulty remembering visual symbols or recalling auditory messages

- perceptual-motor impairments; inability to identify or discriminate between visual or auditory stimuli

- is confused in his relationship to the physical environment and gets lost in a familiar setting such as school, playground, and neighborhood

- frequently disrupts the classroom, demands attention to an inappropriate degree, often speaks out of turn, and is unable to inhibit responses

- frequently disregards or fails to understand the feelings of others

- shows low tolerance for change, may overreact, may laugh or cry inappropriately

- lacks self-sufficiency, seldom initiates activities, and has limited acceptance of age role, compensates by acting foolish, making fun of others, etc.

D. Language:

- fails to grasp simple word meanings

- comprehends words in isolation but fails to comprehend in connected speech

- frequently uses incomplete sentences and has numerous grammatical errors as evidenced by poor use of pronouns and verbal tenses

- unable to organize and express ideas even with adequate information, gropes for words, relates minor or irrelevant details

- voice problems; pitch

- may use language of own invention

E. Physical:

- general coordination poor; awkwardness evident in skipping, climbing, running, walking, jumping, hopping, etc.

- poor balance; falls or stumbles frequently, maintains equilibrium by touching tables, chairs, or desks when moving about the room

- difficulty with fine motor coordination tasks

- difficulty differentiating between right and left; exhibits directional confusion; exhibits mirror-writing, reversals, inversions, and rotations of letters and/or numerals

- often is disorganized in personal appearance

## III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation of the child (note that observation is also part of the required evaluation of a child)

E. Review of anecdotal records

## IV. Assessment

An evaluation by a multidisciplinary team, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary langauge shall be determined. If the language is other than English, an evaluator shall be used who is fluent in the child's primary langauge and English, or an interpreter shall be used to assist in language and testing. Test instruments should be used which do not stress spoken language and which are considered valid and reliable performance measures of functioning. Signed parent consent shall be obtained prior to the assessment.

A. The reason for referral

B. Educational history of the child including documentation of efforts to educate the child in the regular classroom.

C. Complete psychological evaluation, including a comprehensive intellectual assessment.

D. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

E. Types of tests administered to the child and results of such tests.

F. A recommendation of specific goals and instructional objectives based upon the current levels of performance needs

G. An educational evaluation. (See p. 3.55 for suggested tests.)

H. In addition, for the child suspected of having a specific learning disability, PL 94-142[2] states:

§ 121a.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 121a.532, each public agency shall include on the multidisciplinary evaluation team:

(a) (1) The child's regular teacher, or
(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
(3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and
(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

§ 121a.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:
(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a) (2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and
(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

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[2] The four subsections that follow appeared in the Federal Register. Vol. 42, No. 250, Thursday, December 29, 1977.

(i) Oral expression;
(ii) Listening comprehension;
(iii) Written expression;
(iv) Basic reading skill;
(v) Reading comprehension;
(vi) Mathematics calculation; or
(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;
(2) Mental retardation;
(3) Emotional disturbance; or
(4) Environmental, cultural or economic disadvantage.

## § 121a.542 Observation

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

## § 121a.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;
(2) The basis for making the determination;
(3) The relevant behavior noted during the observation of the child;
(4) The relationship of that behavior to the child's academic functioning;
(5) The educationally relevant medical findings, if any;
(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and
(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

## V. Programming Considerations

Because of the wide discrepancies which exist within the specific learning disabilities category, because of the theories which have evolved, etc., programs have been many and varied. At one time most programs for children with specific learning disabilities were founded upon an approach, e.g., perceptual-motor, language development, etc. The mandate of PL 94-142, however, is the development of a program based upon the individual needs of the learner. This approach of an individualized instructional program means that each student can be served regardless of the degree of involvement of learning disability, educational delivery model, or age level of the learner.

Five steps are involved in this process and each of these steps are broken down into substeps. The steps are:

1. Task Analysis. The objective of the task analysis is to identify in detail what the learner must possess in order to perform the task. (The STEP strands are good examples of this.)

2. Criterion Measures. Behavioral specifications which are used to determine whether or not a student is able to accomplish the task at a particular performance level. (This permits the student to be measured against himself/herself--not against a national norm.)

3. Objectives. A behavioral description of a student's behavior after instruction. These statements must be measurable, state in terms of student behavior, and state the condicitons under which the behavior will be performed. (The short-term instructional objectives of the IEP fit here. If STEP strands are used, evaluation criteria must be added.)

4. Instructional Sequences. Selecting the procedures and materials used to teach the skills identified in the task analysis.

5. Evaluation and Revision. Evaluation measures the success of the learner; base revisions on results of the evaluation, make appropriate revisions.

The approach to programming requires the educator to have an indepth knowledge of learning theory, knowledge of curriculum content, knowledge of instructional materials, knowledge of management systems, etc.

A. Academic:

Numerous instructional programs have been developed for students who have specific learning disabilities. The educator must review and evaluate the programs for appropriateness and effectiveness. Listings of programs and accompanying materials for each of the subject areas can be obtained from individuals who have specialized training in specific learning disabilities, from textbooks, professional organizations, etc. Because these children have encountered difficulty with materials used in regular classes, modifications are necessary. For example, it is doubtful the student will encounter success with the regular basal reader. However, perhaps with the reader put on tape the student will be able to use that material in addition to others. This is especially necessary if the student is to remain in the regular classroom. Many simple modifications exist for students who have difficulties with the regular materials. For example, a student who has difficulty with writing can make use of a typewriter or tape recorder. Printed materials can be put on tape. Calculators assist the student having difficulty in arithmetic, and digital watches are helpful in being on time. Many modifications can be made. These modifications must be based upon the individual learning needs of the students.

B. Social:

Since these children do not have physical signs which indicate a learning problem, they are often expected to perform at a level beyond their ability level. Because they cannot meet these expectations they have often developed behavior which allows them to hide their problems, and may include disruptive, antisocial behaviors. Usually students who display these behaviors have low self-concepts. Commercial programs which can assist students in understanding themselves and learning to get along with others include:

- The Self-Control Curriculum

- Developing Understanding of Self and Others (DUSO)

- Toward Effective Development (TAD)

Although these programs provide resources, they are not the complete solution to students' social difficulties. The teacher's attitude and skill in being able to work with and provide for students with specific learning disabilites can be the key to overcoming social problems.

C. Language:

The remediation of spoken langauge defects among children with a specific learning disability often requires the services of a language specialist specifically trained in this area. Nevertheless, teachers can adhere to certain principles in working with these students. These include allowing the student time to say what he/she means when unable to express ideas verbally, showing interest in what the student is trying to say, etc. Commercial programs which are available include:

- Peabody Language Development Kits (PLDK)

- DISTAR Language

- The MWM Program for Developing Language Abilities

- Goldman-Lynch Sounds Development Kit

D. Physical:

Because students with specific learning disabilities are often poorly coordinated they often resist becoming involved in physical activities. The major focus of the physical education program should be one that allows the individual to succeed. These students should be encouraged to participate with other students but not to compete beyond their capabilities. Remedial training programs are available for developing motor skills, and adaptive physical education services may be needed.

Through the utilization of program modifications, the appropriate use of related services, etc., many children with specific learning disabilities are being served in the regular classroom. The goal of the educational program should be to promote services to as many students as possible in a setting with nonhandicapped peers.

EXAMPLES OF TESTING INSTRUMENTS (Not considered mandatory or all inclusive)

1. Oral Expression
   Utah Test of Language Development (UTLD)
   Carrow Elicited Language Inventory (CELI)
   ITPA Verbal Expression Subtest
   Northwestern Syntax Screening Test (NSST)
   Test of Language Development (TOLD)

2. Listening Comprehension
   Brown-Carlson Listening Comprehension Test
   Carrow Test for Auditory Comprehension of Language
   Durrel Listening Reading Series
   Goldman-Fristoe-Woodcock Auditory Tests
   Lindamood Auditory Conceptualization Test

3. Written Expression
   Mykelbust Picture Story Language Test
   Comprehensive Tests of Basic Skills (CTB/McGraw Hill)
   Iowa Tests of Educational Development: Test 3
   Valett Psychoeducational Inventory of Basic Learning Abilities
   Slingerland Screening Test for Identifying Children with Specific Language Disabilities

4. Basic Reading Skills
   Woodcock Reading Mastery Tests
   Peabody Individual Achievement Test (PIAT)
   Spache Diagnostic Reading Scales
   Durrell Analysis of Reading Difficulty
   Gates-McKillop Reading Diagnostic Tests
   Stanford Achievement Tests
   Metropolitan Achievement Tests

5. Reading Comprehension
   Woodcock Reading Mastery Tests
   Peabody Individual Achievement Test (PIAT)
   Stanford Achievement Test
   Stanford Diagnostic Reading Test
   Durrell Analysis of Reading Difficulty
   Gates-MacGinitie Reading Tests Survey F
   Gilmore Oral Reading Tests
   Metropolitan Achievement Tests

6. Mathematics Calculation
   Key Math Diagnostic Arithmetic Test
   Wide Range Achievement Test
   Stanford Achievement Tests
   Stanford Diagnostic Arithmetic Test

6. Mathematics Calculation (cont.)
   Metropolitan Achievement Tests
   SRA Achievement Series
   Peabody Individual Achievement Test (PIAT)

7. Mathematics Reasoning
   Key Math Diagnostic Arithmetic Test
   Iowa Every-Pupil Tests of Basic Skills
   SRA Achievement Series
   Stanford Diagnostic Arithmetic Test
   Peabody Individual Achievement Test (PIAT)
   Metropolitan Achievement Tests

## Speech Impaired

### I. Definition

"Speech Impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance. (§ 121a.5(b)(10))

### II. Possible Referral Characteristics

A. Intellectual:

- intellectual functioning is not as strong an indicator as other referral characteristics

B. Academic:

- speech and/or language is not commensurate with mental age
- academic achievement is below expectancy
- achievement and/or intelligence test scores indicate verbal areas significantly lower than nonverbal areas
- achievement in reading and language arts below expected levels with a delay or difficulty in the initial instruction in reading

C. Behavior:

- hesitates to participate in verbal activities
- inattentive
- difficulty following directions in class, particularly when given to a group
- difficulty comprehending spoken language
- embarrassed or disturbed by own speech, regardless of age
- difficulty "tuning in" to tasks or switching tasks
- trouble understanding assignments and has to be "shown" what to do

## D. Language

- reluctance to talk
- restricted or inappropriate speech
- questions and/or responds inappropriately
- limited ability to discriminate associations, likenesses, differences or categorizations of sounds and words
- grammar (syntax) is deviant from child's background
- limited written language ability

### 1. Voice

- vocal pitch inappropriate for the student's age and sex
- unusually loud or soft volume
- breathy, harsh, husky or monotone voice
- continually sounds congested (denasal)
- unusually nasal--a "whining" quality

### 2. Fluency

- abnormal rhythm rate, and/or inflection, clutters speech
- words or parts of words prolonged or repeated
- stammers or stutters
- unintelligible speech
- difficulty communicating ideas orally
- relies on gestures
- speaks in single words or short phrases
- mixes order of sounds in words, e.g., deks/desk
- difficulty articulating isolated sounds or sounds in words

E. Physical:

- conditions indicated in the student's medical history: cleft lip and/or cleft palate, deviant palatal-pharyngeal structure, vocal nodules or other pathology of the vocal mechanism; hearing loss, myringotomy or other aural surgery; cerebral palsy, brain injury
- continuous allergy problems or frequent colds
- deviant orthodontal structure
- oral muscular coordination slower than normal

III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation of the child

E. Anecdotal records

IV. Assessment

An evaluation, in writing, appropriate to the child's educational needs shall be determined. If the language is other than English, an evaluator shall be used who is fluent in the child's primary language and English, or an interpreter shall be used to assist in language and testing. (Note that the comment following § 121a.532 states: Children who have a speech impairment as their primary handicap may not need a complete battery of assessments [e.g., psychological, physical, or adaptive behavior]. However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.) Signed parent consent shall be obtained prior to assessment.

A. The reason for referral

B. A current audiometric screening

C. A review of the child's academic history and classroom functioning

D. An assessment of the child's functional communication skills

E. An assessment of the child's speech problem by a certificated speech and language therapist

F. Educationally relevant medical findings

G. Educational history of the child including documentation of efforts to educate the child in the regular classroom

H. Developmental history of the child. If the language spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

I. Types of tests administered to the child and results of such tests.

J. A recommendation of specific goals and instructional objectives based upon the current levels of performance needs.

K. An educational evaluation as appropriate

## V. Programming Considerations

The individualized education program will be based on the evaluation findings to assist in the remediation of the speech and/or language impairment.

## Visually Handicapped

### I. Definition

"Visually Handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children. (§ 121a.5(b)(11))

### II. Possible Referral Characteristics

Visually handicapped individuals are classified into one of two groups: the partially seeing and the blind. From an educational point, the partially seeing are those students who possess a degree of useful vision which allows them to learn to read print. Blind students possess so little useful vision they cannot read print and must use braille for written instruction. The absence of vision results in three general limitations:

- range or variety of possible experiences
- ability to move about in the environment
- ability to control one's environment or one's self in relationship to that environment

These limitations in turn can result in an altering of an individual's performance. The visual impairment itself is significant to the extent that it has an effect on the student's educational performance. Observable characteristics depend to a large extent upon the severity of the impairment, age of onset, developmental opportunities, and the type or degree of any other handicapping conditions.

A. Intellectual:

- shows approximately the same distribution of scores on intellectual tasks as the seeing individual, when tests like auditory-vocal or haptic-motor channels of communication are used.

B. Achievement:

- has relatively normal education achievement

C. Behavioral:

- appears "clumsy," especially in a new situation

- holds head in an awkward position to look at something or holds a book or other objects in a peculiar position to look at them

- "tunes out" when information is on the chalkboard or in a book which the student cannot read

- constantly asks a neighbor to tell him/her what is happening

- shows signs of fatigue or inattentiveness

- exhibits poor self-concept and ego development

D. Language:

- less effective use of gesture and bodily action

- uses less lip movement in the articulation of sounds

E. Physical:

The National Society for the Prevention of Blindness suggests the following signs of possible eye problems in children:

1. Behavior

   - rubs eyes excessively

   - shuts or covers one eye, tilts head or thrusts head forward

   - has difficulty in reading or in other work requiring close use of the eyes

   - blinks more than usual or is irritable when doing close work

   - holds books close to eyes

   - is unable to see distant things clearly

   - squints eyelids together or frowns

2. Appearance

   - crossed eyes

   - red-rimmed, encrusted, or swollen eyelids

- inflamed or watery eyes
- recurring styes

3. Complaints
   - eyes itch, burn or feel scratchy
   - cannot see well
   - dizziness, headaches, or nausea following close eye work
   - blurred or double vision

III. Preassessment

A. Rescreening for hearing and vision impairments

B. Consideration of academic progress, communication, emotional and psychomotor problems

C. Reading skills

D. Observation of the student

E. Review of anecdotal records

IV. Assessment

An evaluation by a multidisciplinary team, in writing, appropriate to the child's educational needs, shall be conducted. The child's primary langauge shall be determined. If the language is other than English, an evaluator shall be used who is fluent in the child's primary language and English, or an interpreter shall be used to assist in language and testing. Test instruments should be used which do not stress spoken language and which are considered valid and reliable performance measures of functioning. (With a visually impaired student, the evaluator may have to rely on some tests that stress spoken language. However, when the child is not primarily an English speaker, special care must be taken to assure that the results are nonbiased.) Signed parent consent shall be obtained prior to assessment.

A. The reason for the referral

B. Opthalmologists' certification which establishes the severity, implication of the impairment and recommendations shall be obtained

C. Educationally relevant medical findings.

D. Educational history of the child including documentation of efforts to educate the child in the regular classroom

E. Developmental history of the child. If the langauge spoken in the home is other than English, no child shall be considered for placement in a program for handicapped children unless an evaluation of developmental history, cultural background, language and school achievement substantiates other findings of educational handicap. This evaluation shall include estimates of adaptive behavior with findings from a visit to the child's home. The visit shall occur only with the consent of the parent or guardian.

F. The types of tests administered and the results

G. Educational evaluation

## V. Programming Considerations

As stated earlier, effects of visual impairment vary depending on the severity of the impairment, the age of onset of the impairment, developmental opportunities, and the type and degree of any other handicap. These factors singly and in combination result in a heterogeneous group of students with visual impairments. As a rule, the program must be built upon the use of concrete, not abstract teaching methods, and must stress relationships found in the environment.

Visually impaired students often need a variety of special educational materials. Some of the material and equipment include:

- large-type readers

- recorded books

- braillewriters or braille slates and styluses

- nonglare writing paper ruled in bold, wide lines

- APH Speech Plus calculator, gives results of the calculation process in both visual and auditory form

- Optacon, a device that translates printed visual symbols into tactical configurations that can be perceived by touch

- Kurzweil Reading Machine, a device that translates print into auditory output

- closed-circuit television systems, which permit display of print on a TV screen in almost any size

The American Printing House for the Blind is the primary source for educational materials.

A. Academics:

Many visually impaired students achieve quite successfully in the academic area. Provisions need to be made for presenting information in the most concrete method possible. Concept formation is essential and all possible alternatives should be used to insure proper concept formation.

B. Social:

The visually impaired student needs direct instruction in social skills which other students might learn incidentally. Because these students are frequently viewed negatively by others, it is important the visually impaired student enhance his/her appearance and display adequate social skills.

C. Language:

Major emphasis in the area of language is the proper use of facial and body gestures.

D. Physical:

Students need to acquire skills which will help them become active participants. Adaptive physical education may be provided to enhance physical activity. As much as possible the visually handicapped should take part in physical education.

The educational program for these students may require the services of a variety of support personnel. One support person of significance is the orientation and mobility specialist. These specialists provide training in helping visually impaired students develop realistic environmental concepts and in learning techniques to move safely through their environment.

# 4. INDIVIDUALIZED EDUCATION PROGRAM

## The Individualized Education Program

The heart of an appropriate education for any exceptional child or youth is the individualized education program (IEP). Individualized means that the child's program is tailored to meet his or her needs; it also means that it is based on the information obtained through the multidimensional, multidisciplinary evaluation of the student. The IEP should be the guide to providing the special education and related services needed by a child for a maximum of one school year.

The content areas of the IEP are included in the law:

> The individualized education program for each child must include:
>
> (a) A statement of the child's present levels of educational performance;
>
> (b) A statement of annual goals, including short term instructional objectives;
>
> (c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
>
> (d) The projected dates for initiation of services and the anticipated duration of the services; and
>
> (e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. §121a.346

Present levels of educational performance: The areas in which present levels of student performance are listed will vary, depending on the individual student's needs. It is from this baseline data that the IEP will guide service delivery. The areas might include reading, mathematics, language/communication, motor, self-help, social/behavioral, vocational/career levels, etc. (The law requires that the multidisciplinary evaluation include assessment of all areas related to the suspected disability ". . . including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities" (§121a.532(f)). The manner of assessing the child's strengths and weaknesses in these areas should provide the information needed to define present levels of educational performance, and provide the basis for determining the methods to use to help the child progress despite the handicap(s).

The STEP system also may be utilized to describe present levels of educational performance. The behaviors described in the steps may be used to denote the student's achievement level. For example, if the student has been reading by the Distar method, the present level of educational performance may be STEP #7444,41.0. (The annual goal, discussed later, may then be STEP #7448,26.0; all material between those two numbers would be covered by the IEP.)

A difficulty with describing the present level of functioning by using STEP numbers can occur when the student's receiving teacher prefers a different reading series than was used by the previous teacher. (This difficulty would be multiplied if the student transferred to a school where the STEP system was unknown.) Another difficulty could be that the student has not mastered all preceding skills. For example, on a STEP task analysis, the sequence is not necessarily the order in which the information would be taught. To avoid difficulties of this type, it may be more efficient to report the student's present level in terms not tied to a specific series; e.g., "can pronounce all single vowels, vowel combinations, and single consonant sounds." Or, "can add three place number with carrying and subtract three place numbers with no regrouping."

Statement of annual goals: At least one annual goal should be written for each general area of the child's deficits in current functioning. Depending on the child, several annual goals might be chosen for the same area, such as one related to development of gross motor skills, and one to development of fine motor abilities. If a student is nearing the end of formal training, under the vocational career area the annual goals might include those related to specific skill training, work attitudes, social skills (how to get along with coworkers), on-the-job experience, and grooming. Here, as in everything related to the IEP, the plan must be individualized to fit the strengths and weaknesses of the student and the overall plan to help the student gain as much self-sufficiency as possible.

The inclusion of goals from the STEP system can provide a ready-made system of goals and short-term objectives for students whose needs fit developed material. For many students (perhaps for most students) the teacher will have to develop goals and short term objectives in some areas because the student's needs will not be met appropriately by materials already developed. (The teacher can then submit the material for inclusion in the Navajo Area STEP system.) STEP provides guidance about which sequences teachers might use for which students. For example, #7401 (Masters Reading Levels 1-5), is suggested for use with regular students from 4-9 years old; with learning handicapped students from 4-12; with communication handicapped students from 4-13+; with physically handicapped from 4-12; and with severely handicapped students in the age range from 10-13+. The series goes on through #7402 (Masters Reading Levels 6-13) to #7403 (Masters Reading Level 14). By the time #7403 is implemented, the recommended target audience is students 4-13+, and it is not seen as an appropriate sequence for the severely handicapped in any age group.

The IEP team must look closely at the skills to be taught to a student that will lead to achievement of the annual goal. For example, a severely handicapped student might achieve the short term objectives in #7401 only after receiving instruction through several years of schooling. However, a mildly handicapped student may progress through Level 14 (STEP #7403) and, in a few years, need more advanced reading instruction than is contained in this particular sequence. If the student were receiving prevocational or vocational training, the reading instruction might concentrate upon being able to read the vocabulary associated with the skill for which the student is being trained. It might focus upon the language skills that will be needed to help the student get into the job market. For example, STEP #6301, Inquiring and Applying for a Job, begins with 1.0: "Calls or writes prospective employer." The reading (and spelling) to be given at this point in the student's program might relate to the skills that would be needed to write a letter requesting an application form, and filling out the form. If developed STEP sequences do not meet the student's needs, new sequences must be formulated. Otherwise the student will not be receiving an appropriate education as mandated by law.

The inclusion of parents on the IEP teams is of critical importance. The parents must be given the opportunity to help formulate the annual goals and short-term objectives if they so desire. If it is very important to them that their child learn all of the self-help skills needed for the child to later live independently or semi-independently, the goals should be stated and achieved year-by-year. Parents may let the teacher and other professionals make the judgments about which reading series would best suit their child, or how much their child might achieve in mathematics during a school year, but they should always sit on the IEP team as equal partners.

Short-Term Instructional Objectives: Short-term instructional objectives are the means of reaching the annual goals. Each annual goal might have several short-term objectives (measurable units of progress) that lead to achievement of the goal.

To illustrate a short-term objective in the area of mathematics, look at STEP #7202, Shasta Math, Addition and Subtraction. (The instructions on the sheet specify that the student has mastered STEP #7201, Shasta Math, Pre Arithmetic.) Sixteen activities are listed in sequence which would lead to the student's ability to add any numbers in horizontal sequence, and to solve a story problem involving addition of 1, 2 or 3 place numbers. The next 15 activities would lead to the student's ability to subtract any numbers placed in horizontal sequence and to solve a similar story problem involving subtraction. Each of these 31 activities could serve as a short-term objective. For the very slow learner, mastery of the first three activities (or short-term objectives) might take a full school year. At that time, the student would be able to add numbers with sums of 20 or less. For the less handicapped child, a school year might provide enough time to proceed to 13.0 in addition, "Adds 3 or more 3-place numbers with carrying in alternate place; the same child within that year may move within the subtraction short-term objectives to 22.0, "Subtracts 3 and 4-place numbers with no regrouping." (This example illustrates another reason for specifying present levels of student achievement by narrative as well as by STEP numbers. Otherwise, the skills taught between numbers 13.0 and 17.0 (the beginning of the subtraction sequence) may not be formally taught to the child by a new teacher who looks only at the last objective achieved by the child.

The authors of the STEP system suggest that the pages containing the goals and objectives for the child be duplicated and attached to the IEP. The dates for achievement of the short-term objectives would then be indicated on the IEP form itself. Mastery of one of the objectives would be indicated by drawing through the square, with the date of achievement indicated, on the copy from the STEP system.

This method can provide an efficient bookkeeping system for the teacher for tracking child progress, and it can also provide helpful information for the parent (either at parent-teacher conferences, or through communication relayed to the student's home). Also, the completion of objectives can be visually monitored by the student himself providing objective and immediate feedback for the learner, thus reinforcing and motivating further progress.

Here, as with the annual goals, the IEP team must be cognizant always of developing new materials when that already developed within the STEP system does not meet the individual needs of the student. The short-term objectives must also be planned with the parents' help. The short-term objectives must be measurable to meet the legal requirements.

Special Education and Related Services: The ". . . specific special education and related services. . ." to be provided to the student must be indicated on the IEP. The anticipated dates these services will begin, and their duration are also to be noted. For some exceptional students, the services will begin the first day of school in the fall, and continue to the end of the school year. Some services, however, such as speech therapy may be delivered for less than a year (because the problem is minor and easily correctable, etc.). Special education and related services are defined earlier (and may be found in Appendix G, §121a.13 and §121a.14). The services, tied to annual goals and short-term objectives, to be noted on the IEP may state, for example, "small group and one-to-one instruction," or "individual teaching for all academic subjects," etc. The IEP team's responsibility is to indicate the special education service that is seen by them as being the proper vehicle for delivering the services specified. The related services should list transportation if needed, plus any of the other related services that will be needed to help the student benefit from special education.

The relationship between the IEP team and the placement team may vary somewhat from school to school. Most often the IEP is written and the placement is then recommended by the same group of persons. In this situation, the parent is present to give informed, signed consent for the placement. However, it is sometimes the prerogative of the local special education administrator to make the actual placement assignment. If the IEP team's recommendation is that certain information be taught to the student on a one-to-one basis, the assignment may be made to place the student in a resource room for that particular instruction, or to have an itinerant specialist deliver the instruction to the student in the regular classroom. The assignment of the student to a specific class with a specific teacher should always be made with full awareness of the type of delivery the IEP team recommended; otherwise, the intent of a program decided upon by a team--as mandated--will be changed by the actions of one person, which could be seen as cause for an impartial due process hearing.

A STEP sequence, #8101, for assigning a child to a particular setting, provides a numerical index to how the student is progressing relative to the restrictiveness of the placement. For example, the student's placement may be shown on the IEP as #8101,19.0: "Attends self-contained class. Attends regular class for one academic period." During the year, the student may progress to #8101,20.0: "Attends self-contained class. Attends regular class for two academic periods." Not all of the steps within #8101 are strictly sequential, however, so care in interpreting changes is required. For example, a student in a self-contained class may eat lunch with regular class students (#8101,14.0) before he/she participates with them at recess (#8101, 13.0) or before the student rides the regular schoolbus (#8101,12.0).

Participation in the regular education program: One of the major emphases of PL 94-142 is the provision for handicapped children to be educated to the maximum extent appropriate with their nonhandicapped peers. To assure that those who plan for exceptional children keep this goal in mind, the IEP team is required to state on the IEP the amount of time the child will participate in the regular education program. Depending on the preference at each school, this time can be described by percentages, by hours, or by class periods. It should be noted that the law states, "to the maximum extent appropriate, handicapped children. . . are [to be] educated with children who are not handicapped" (§121a.550). "Appropriate" means that the individual child is able to progress as expected, and that the nonhandicapped students are also able to progress. If a student is so disruptive that the education of other students is significantly impaired, the placement would not be considered appropriate. (See Comment following §121a.552.) It is the IEP team's responsibility to determine the appropriateness of the times indicated for the child to participate in the regular education program and to make consistent decisions relative to the least restrictive placement.

Projected dates for initiation of services. . . The IEP can be viewed as a formal record of the special education program that the school promises to deliver to a student. Because handicapped children needing special education services were often kept waiting in the past, the law specifies that the projected dates for initiation of services and the anticipated duration of services must be written on the IEP at the time it is developed by the team--which includes the parents. In most cases the services will be initiated at the beginning of the school year (or immediately following formulation of the IEP for the student who has just been declared eligible), and will continue to the end of the school year. In no case can an IEP cover more than one year. The important factor is to assure that the dates established to begin services are met, and that those dates follow as closely as possible the date of the IEP team meeting.

Appropriate objective criteria and evaluation procedures. . .: The IEP also must include "appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved." In order for such evaluation to occur, the short-term objectives must be stated in a way that can be measured. For example, STEP #7201, Shasta Math, Pre-Arithmetic, lists short-term objective 17.0 as "Reads and writes numbers 1 to 100." With the addition of the date when the child is expected to achieve this skill, it becomes a short-term objective that can be measured. Achievement of all short-term objectives under an annual goal should lead to achievement of the goal.

## The IEP as a Management Tool

As stated earlier, the IEP should be the plan for all the special education and related services to be provided to an exceptional student to meet his/her needs for a maximum of one year. Should a student fail to achieve the short-term objectives as described, there is no legal liability for the school or the teacher. However, if a student is falling behind meeting the short-term objective schedules, the teacher (and perhaps the administrator responsible for special education) must closely examine the causes. Should other methods be used? Would an additional related service help the student achieve the short-term objectives? Is another curriculum desirable? In the first instrance, the teacher might change methods. In the second case, the addition of a related service would require an IEP review meeting by the team. In the third instance--that of changing the curriculum--an IEP team meeting may or may not be needed, depending on what the IEP says. If, for example, the short-term objective is identified by a STEP number that is related to a specific commercial curriculum, a meeting would be called. If, however, the short-term objective stated, "By December 15, the student will be able to sound out all single and combination vowels," the teacher could change to another series without calling an IEP team meeting.

The important distinction is that whenever anything written on the IEP must be changed--either by addition or deletion--an IEP review is called for.

In order to comply with the law, each student's IEP must be reviewed at least annually. Many students, however, will need to have their IEPs reviewed more often than that. If a student who is not achieving calls for a close look at his/her IEP, so does the student who is achieving faster than predicted. It is of utmost importance to maintain the momentum for learning that occurs with all children, including exceptional ones. When the child's progress has been underestimated, an IEP review should be scheduled to add content to the student's program. Remember that not all children who receive special education and related services stay outside the regular program forever.

If all the exceptional students within a school have their IEPs developed in May--at the end of the school year--or in September, at the beginning, the professional staff will experience great pressures during that month to meet their obligations to their students. If, however, some students are referred, assessed, and found eligible in the middle of the school year, the IEP developed for them does not necessarily have to be reviewed until the anniversary date of the first IEP. (Every student, however, must receive a review of the IEP if called for by the teacher or the parent, regardless of when the previous IEP was developed.) Other students, because of early reviews, will have different dates on their IEP reviews. Once a school has an orderly and responsive special education delivery system underway, IEP work should spread itself over the school year and curtail some of the pressures found when all students are due for review during the same month.

The importance of including the parents on the IEP team as coequal partners cannot be overstressed. If parents are invited to the IEP team meeting, if schedules are set that are agreeable to them, and they still do not attend, the school must document its attempts to involve them. According to PL 94-142, parents do not have to sign the IEP; they do, however, have to give informed, signed consent for the preplacement evaluation of their child, and again for the initial placement for special education and related services. Presumably, at the time they signed for placement, the IEP would be reviewed with them and explained. If parents are not cooperative or appear disinterested, the school must still continue to try to involve them in the original and in subsequent reviews of the IEP. (As explained in another section, all such communications must be made in the parents' native language or through an interpreter for parents who are deaf.)

The IEPs for junior high and high school exceptional students should provide evidence that the students are being prepared to enter the adult world. Not all exceptional students will be able to be gainfully employed, but more of them than are ever prepared for the world of work could be. Most parents are keenly aware of their exceptional student's entry into adulthood. It is here that the parents can provide help to the educators about what they feel their child can accomplish (annual goals and short-term objectives); the parents are the uninterrupted continuity in their child's life as he or she moves from teacher-to-teacher, and perhaps school-to-school. A review of a student's cumulative folder after several years of special education should show steady movement toward skills involved in functional success after the school experience is completed. Each teacher and administrator along the way is responsible for helping the student move toward fulfilling his/her potential.

When the IEP team writes an IEP for a student, the team should list all services needed by the student for an appropriate education, whether or not the services are available. (This has been clarified by the Bureau of Education for the Handicapped, through an informal letter from Dr. Edwin Martin to the Chief State School Officers, November 17, 1977.) When this practice is followed, the collective IEPs from a school provide vital information to the administrators who manage special education. For example, if four children need, but are not receiving, occupational therapy, the administrator might arrange to share the costs for a therapist with a nearby school, or hire a private practitioner on a part-time basis.

The IEP also provides the vehicle for communication with parents. If the school is working to establish a certain behavior in a student, the parents can help meet the objective by reinforcing the behavior at home. Once the school and parents work jointly to achieve common goals and objectives for the student, rapport between the home and school is strengthened, and more importantly, the student's chances to progress are enhanced.

No one can deny that the IEP process does take time, and it takes a lot more planning than many school personnel like. However, when IEPs are properly formulated by a team, when the parents are involved, and when the teacher plans and carries out this planning in the classroom, the IEP for each student can facilitate quality interactions between the student and the school system. Progress is documented and orderly; lesson planning is facilitated, and the student, the parents, and the teachers know the steps that are taken to lead to the annual goals. It is through an individualized education program for each handicapped student that each of them will be assured of receiving a free, appropriate public education.

# 5. PROCEDURAL SAFEGUARDS

## Procedural Safeguards

The procedural safeguards outlined in PL 94-142 assure that everyone will receive equal opportunities to an education. Due process in the school system provides protections for handicapped children, their parents, and the school. Following are brief explanations of the important procedural safeguards in the law. Details may be found in the Rules and Regulations to 94-142 in Appendix G.

**Prior Notice:** Prior notice means that the school or Agency will provide written notice to parents of handicapped children a reasonable time before they propose to initiate or change or refuse to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. This notice must contain an explanation of all the procedural safeguards available to the parent (§ 121a.500 through § 121a.554), describe the action proposed or refused by the agency, explain why the agency wishes to act, describe each evaluation procedure used as a basis for the proposal or refusal, and describe any other relevant factors. The notice must be written in language understandable to the general public, and must be provided in the native language of the parent unless clearly not feasible. If it is translated orally, documentation must be kept which shows that the parent understood the prior notice.

**Parent Consent:** Informed, signed parent consent must be obtained before a child is appraised (evaluated, assessed, or tested) to determine if the child is eligible for special education services. (See memo, p. 5.6.) Informed, signed parent consent must be obtained before a child is placed in a special education program or changed to another special education program. (See policy on placement in private schools, pp. 7.13 - 7.14.)

**Parent Participation:** Parents should participate in all educational decisions made about their handicapped child:

Parents should be interviewed during the appraisal process for their views of their child's strengths and weaknesses, and for family and medical histories of the child.

Parents should participate in the Individualized Education Program meetings and approve the program designed for their child along with other committee members (at which time they can also give informed, written consent for placement.) If the parents do not wish to participate in the IEP meetings, the school must document its attempts to involve the parents and keep the record in the child's folder. (The school must still obtain written consent for placement.)

Parents should participate in the annual review of the IEP (at which time they can plan the next IEP with the committee members, and give signed consent for placement).

Independent Educational Evaluation: Parents may obtain an independent educational evaluation of their child if they feel the school's evaluation was inaccurate or unappropriate. The independent evaluation must be provided at no cost to the parent unless the school proves, through an impartial due process hearing, that its evaluation was appropriate. The independent evaluation would then be at the expense of the parents. Should the parents obtain an outside evaluation, at their own or at public expense, the results of that evaluation must be considered in all decisionmaking at the school regarding the child. (If parents question the appropriateness of their child's assessment, the school might discuss other assessment sources with them, and help them arrange an independent evaluation that would be available at no cost; otherwise the school would have to pay the costs or initiate a hearing to show that the school's assessment was appropriate.) An impartial hearing officer may request an independent educational evaluation at the school's expense.

Impartial Due Process Hearing: Either the parents or the school district may request an impartial due process hearing to resolve disputes that arise between parents and the school relative to any of the issues that require prior notice. The areas and the proposal or refusal to initiate or change services in these areas are contained in the following matrix. (Note, however, that these matters involve differences of opinion--they are not compliance matters. No parent should ever have to initiate a hearing over a compliance issue. If a school is out of compliance, e.g., excluding a child or youth because of a handicap, then the proper administrative steps must be taken to assure that the school complies with the law.)

| Issues \ Parties | Parent | | Public School | |
|---|---|---|---|---|
| | Proposes | Refuses | Proposes | Refuses |
| 1. To initiate or change the identification of the student as handicapped | | | | |
| 2. To initiate or change the evaluation of the student | | | | |
| 3. To initiate or change the placement of the student | | | | |
| 4. To initiate or change the provision of a free, appropriate public education | | | | |

Mediation Procedures: An impartial due process hearing can become a very expensive procedure and the costs must be borne by the local school district. The purpose of a due process hearing is not to prove the district right or wrong, not to prove the parent right or wrong, but to ensure that an exceptional child receives an appropriate educational program.

Because of the expenses involved--released time for teachers, administrators, educational diagnosticians, etc.--to present evidence and to be cross-examined, arranging for a place to hold the hearing, taking care of all the necessary paperwork before and after the hearing, arranging for recording of the hearing, providing transcripts, retaining an attorney (if desired), etc.--because of the expense in time, actual financial expenditure, and the emotional expense to both parties, the school administrator should try to see that differences are reconciled without a formal hearing if possible.

Once a parent requests a hearing in writing, mediation can continue, but arrangements must be made to hold the hearing and receive the hearing officer's decision within 45 days of the written request.

Surrogate Parents: Every child eligible for special education needs active involvement of his/her parents in giving permission for testing and placement, tracking the child's progress through the program, and helping develop the IEP. A child whose parents are unknown or unavailable or who is a ward of the state must have a surrogate parent or guardian appointed to participate in the special education process. Note that a surrogate parent cannot be appointed for a child whose parents are uncooperative. (See p. 5-7.)

Confidentiality: The Family Education Rights and Privacy Act (FERPA) applies to the records of all students. Procedures must be in place in every school to assure that the educational records of students are accessible only to persons designated by the school whose names are posted in the office. The school must assure that parents will be shown all the educational records of their child when so requested (in no event later than 45 days after the request). Each school must have a confidentiality officer who is charged with seeing that all school staff are trained in confidentiality procedures, and that an annual notice is sent to all constituent families. The annual notice may be prepared and disseminated from the Agency level. Written parent consent must be obtained before student information is given to anyone not on the authorized list. Each student's record folder must have an access list on which access by those not on the authorized list is recorded. If the annual notice announces that the school will transfer student information to another school when the student moves, records may then be sent to the student's receiving school without written parental consent. Special care must be given to the maintenance of diagnostic data. The checklists (p. 5.22) provide an outline of the FERPA requirements. (Remember, confidentiality regulations apply to the records of all students!) See the Final Report of the Committee on Student Records, Task No. 116, Area Director's Task Force, pp. 5.8 to 5.21.

**Access to Programs:** Handicapped students must not be denied access to programs because of architectural barriers. Section 504, Nondiscrimination on the Basis of Handicap (Vocational Rehabilitation Act of 1973, PL 93-112) mandates full access to programs for all handicapped students. This does not mean that every room in the building must be accessible, but those rooms in which the student's classes are held must be. For example, if a student in a wheelchair wants to enroll in the chemistry class which is on the second floor and an elevator is not available to transport the student there, the chemistry class and laboratory would have to be moved to the first floor. Areas where all students in a school assemble must also be accessible to handicapped students. See Appendix C for a checklist on accessibility.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

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BIA NAVAJO AREA OFFICE
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OCT 27 1978

IN REPLY REFER TO:

Memorandum

**To:** Area Directors
Attn: Assistant Area Directors, Education

**From:** Acting Deputy Commissioner of Indian Affairs

**Subject:** Parental Permission for Assessment P.L. 94-142
Sec. 121a.500 (ABC)

In accord with the Fiscal Year 1978 BIA State Plan, page 29, VIII. Procedural Safeguards (612(5)(A),615) the present application for entrance to boarding schools will not be sufficient to meet the requirements of P.L. 94-142 for informed, written parental consent for assessment of students referred for suspected handicapping conditions.

Prior to assessing any children who have been or may be referred, an appropriate form/letter must be sent to parents and written parental consent must be obtained and maintained in student's confidential folder.

Please note that:

1. Consent means:
   - (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication.
   - (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom: and
   - (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

This memorandum will rescind the previous instructions from this office dated February 21, 1978.

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# Surrogate Parents - P.L. 94-142

Public Law 94-142 grants all handicapped citizens up to age twenty-one (21), a free and appropriate education. This educational right has been designed to include, as a full partner in the process, the parent of the individual. Part 121a.500 makes it clear that the parent must be fully informed of all relevant information relating to the specific situation and that the parent understands and agrees in writing. The parent must also understand that permission is voluntary and can be withdrawn at anytime. Parents also have the right to examine records, make or cause to make independent educational evaluations, sometimes at public expense, request list of types and location of educational records collected, maintained and used by agencies, call for hearings, amend records and other activities as well. While these responsibilities are many and the list is not all inclusive, a major part and purpose of parental involvement is that of advocacy for the student.

When no parent can be identified, which includes a guardian, a person acting as a parent of a child, such as a grandmother or stepparent with whom a child lives, or a person or persons who are legally responsible for the child's welfare, then a surrogate parent must be appointed. The selection of a surrogate parent must not conflict with existing state laws governing this subject and the BIA must insure that the surrogate parent has no conflicts of interest between themselves and the child he or she represents. They must have knowledge and skills to insure adequate representation of the child. A surrogate parent may not be an employer of the BIA or of any agency, public or private, which participates in the care of the child. The surrogate parent has the same rights and responsibilities as a biological parent regarding the education of the child.

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# FINAL REPORT
# OF
# COMMITTEE ON STUDENT RECORDS - TASK NO. 11b
## AREA DIRECTOR'S TASK FORCE

The following guidelines and forms are recommended by the committee to Principals and Record Custodians to assist them in the maintenance and control of student records in Navajo Area schools. These guidelines are primarily an interpretation of 25 CFR 36 and other related regulations. It is understood that specific guidelines and forms pertaining to handicapped students will be published under separate cover at a later date.

We are further assuming that the letter requesting the amendment to 25 CFR 36 to include census numbers for student identification will be approved. (See attached letter.) Each school principal will designate in writing a record custodian for each location where records are kept within the schools. Principals must have readily available in writing the custodian(s) and location(s) of all student records.

Improper maintenance and control is punishable by law, Privacy Act P.L. 93-579, December 31, 1974, and carries the following penalties:

1. $5,000 fine for improper disclosure
2. $5,000 fine for failure of proper notice requirements
3. $5,000 fine for requesting records under false pretenses

To assure proper control, the record custodian will maintain a "Record of Access" and "Custodian's Log." (See Examples 1 and 2).

A Record of Access (Example 1) is to be used by non-school staff who want to inspect the record. The person making the request must sign the Record of Access and state the purpose for which the record was inspected. This includes parents and students inspecting their own records. This form must either be included in each student folder or stamped on the outside.

A Custodian's Log (Example 2) is a record of all persons inspecting or using a record. The Custodian's Log will be kept near the records. NO record is to be inspected or taken without signing the Custodian's Log.

Student records are those records, files, documents, recordings, and other materials which contain information directly related to a student and which are maintained by the school. Examples such as, but not limited to:

1. Grades
2. Testing information
3. Social summaries
4. Incident reports
5. School Health Record
6. IEP's
7. Applications
8. Parental Consent Forms
9. Cumulative folders
10. Transcripts
11. Counselling reports

To assist Record Custodians in classifying and controlling information, student information will be categorized into four levels as follows:

Level A - Primarily public information. Directory/roster information.

Level B - Cumulative folders and other records of student performance.

Level C - Confidential information.

Level D - Personal, professional information which is in the sole possession of the maker and cannot be disclosed.

Refer to "Levels of Student Information Chart." (Examples A and B). Level "B" information (grades, transcripts, cumulative folders) may be sent between Bureau schools without parental or adult student consent. If records are to be sent to schools outside the Bureau, the records may be sent without prior consent, but parents or adult students must be notified that the record was sent. (See Example 6). Contract schools are considered the same as Bureau schools. (See Example 3-4-5).

School health records may be sent with the cumulative folders without parental or adult student consent. The complete cumulative folder will be sent between BIA schools for elementary students. Only copies will be sent to non-Bureau schools. Only copies of high school student records will be sent to both Bureau and non-Bureau schools.

Records requested for non-school use must have parental or adult student consent. (See Example 3-4-5).

Level "C" information is considered confidential information and should be under lock and key at all times. Confidential labels should be attached to all file drawers containing Level "C" information. Information on handicapped students is to be kept separate from other records.

Counseling reports and incident reports are considered Level "C" information. This information requires parental and adult student consent when sent to schools outside the BIA. (See Examples 3-4-5).

Level "D" information consists of personal, professional notes for the sole use of the maker. These notes cannot be disclosed to anyone. If this information is disclosed for any reason, it then becomes Level "C" information and must be included in the Level "C" folder.

At the time of enrollment, parents must be notified of their right to review their child's record at the school. The principal will refer the parents to the appropriate personnel if they wish to review the records. Parents must be informed of their rights to contest information which they feel is inaccurate or misleading. (See Example 7).

High School records will be filmed and the originals sent to the archives when the record is five (5) years old.

Elementary school records (Levels B and C) may be destroyed 5 years from the last year of attendance at that school. Student records will be purged of:

Antecdotal records
Incident reports
Records of hearings

and other non-essential information before being transferred to another educational institution. Parents or adult students will be notified of this action by sending notification to them at their last known address. (See Example 8).

Dormitory log books often contain personal information which is necessary to insure adequate coverage and supervision of the students. These log books should not be left out on the top of desks and should at least be kept away from public view. The information in the log books should be used for the efficient operation of the dormitory and should not be shared with those who have no reason to know or do not need the information for the direct benefit of the students or operation of the dormitory.

Example A

COPY

## LEVELS OF STUDENT INFORMATION

| WHAT IS IT? | HOW IS IT OBTAINED? | HOW IS IT USED? | TO WHOM IT MAY BE DISCLOSED? |
|---|---|---|---|
| **LEVEL A - Primarily Public Information - Directory/Roster Information** | | | |
| -Name and sex<br>-Birthdate and birth place<br>-Home address and Census number<br>-Parent or guardian - name, address and phone number<br>-Names and dates of schools attended, location and principal's name<br>-Major studies<br>-Awards<br>-Height and weight for athlectic participation<br>-Activities and sports | -From parents or guardians<br>-From the student<br>-From the prvious school on request; received in written form | -To personally identify the student<br>-As directory information, i.e., student roster, reports to administration, (excluding health information) | -Professionals working with the student<br>-Other educational agencies<br>-Professionals or agencies doing studies<br>-Parent or the student if 18 years of age or older<br>-State and federal agenices responsible for monitoring educational programs |
| **LEVEL B - Verified Information on Functioning or Performance - Cumulative Folders** | | | |
| -Results of group standardized achievement tests<br>-Administrative history, i.e., awards, disciplinary action (suspension, expulsion) | -Developed at current school, or<br>-On written request to a previous school of attendance | -To assist in construction of an individualized education program<br>-Placement purposes | -Professionals working with the student<br>-Other educational agencies<br>-Professionals or agencies doing studies |

-continued-

**Example A (continued)**

COPY

## LEVELS OF STUDENT INFORMATION

| WHAT IS IT? | HOW IS IT OBTAINED? | HOW IS IT USED? | TO WHOM MAY IT BE DISCLOSED? |
|---|---|---|---|
| **LEVEL B (continued)** | | | |
| -Attendance<br>-School Health Records<br>-Grades<br>-Offices held<br>-Awards - Honors<br>-Extra-curricular activities<br>-Rank | -Developed at current school, or<br>-On written request to a previous school of attendance | | -Parent or the student if 18 years of age or older<br>-State and federal agencies responsible for monitoring education programs<br>-Public schools |
| **Example B** | | | |
| **LEVEL C - Confidential Information** | | | |
| -Specialized reports of professionals who have screened, assessed and/or evaluated the student, i.e., psychologist, social worker, diagnostician, physician's medical assessment and individual evaluation as it pertains to placement in a school program, etc.<br>-Specialized reports from outside agencies or specialists, i.e., private schools, social service agencies, vocational rehabilitation, hospitals, etc. | -On special written request to the previous school when justification for its need is made<br>-Briefer reports obtained through direct contact and verbal reports<br>-Parent consent is required | -To assist in the development of an individualized education program, particularly in the case of a severely involved student<br>-Placement purposes<br>-Personal and social development<br>-Resolve student problems | -Professionals working directly with the student<br>-Parent or the student if 18 years of age or older<br>-Authorized officials monitoring in compliance with federal law<br>-Requires parental consent outside the BIA |

-continued-

Example B (continued)

COPY

LEVELS OF STUDENT INFORMATION

| WHAT IS IT? | HOW IS IT OBTAINED? | HOW IS IT USED? | TO WHOM MAY IT BE DISCLOSED |
|---|---|---|---|
| LEVEL C (continued) | | | |
| -Anecdotal records<br>-P.L. 94-142 IEPs - counseling reports<br>-Incident reports | | | |
| LEVEL D - Personal Professional Files | | | |
| -Records of instructional, supervisory, administrative and educational personnel which are in the sole possession of the maker thereof<br>-Confidential reports and counseling records | -Personal interviews<br>-Confidential statements | -Personal notes cannot be disclosed. If the professional feels these notes are of value to the educational program of a student, the professional should prepare the information for inclusion in Level C | -Cannot be disclosed |

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**Example 1**

RECORD OF ACESS

| DATE | BY | PURPOSE |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

**Example 2**

CUSTODIAN'S LOG

| | Checked Out | | | Checked In | | |
|---|---|---|---|---|---|---|
| Student Name | Date | Time | Custodian Initial | Date | Time | Checked Out To |
| | | | | | | |
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Sample 3
Elementary
Schools

COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

## REQUEST FOR TRANSCRIPT OF STUDENT RECORDS

RE: ______________________________ ____________ ____________
Name of Student D.O.B. Grade

Request is hereby made for a transcript of all grades, attendance records, test scores and diagnostic or special placement information for the above named student.

******************

## PARENT AUTHORIZATION FOR RELEASE OF INFORMATION

I hereby authorize, by my signature, for my child's school records, including all grades, attendance records, test scores, diagnostic or special placement information, and any other information pertinent to his/her transcript, to be sent to the school that is requesting them.

______________________________
Parent / Guardian

______________________________
Address

______________________________
Date

I, ______________________________, hereby authorize the release to a third party, if necessary, for the educational advancement of the above named student.

______________________________
Parent / Guardian

______________________________
Date

Sample 4
High Schools

COPY

NAME OF HIGH SCHOOL

ADDRESS

CITY, STATE, ZIP CODE

Date: ______________________________

TO: Name of School ______________

Address ______________________

City, State Zip Code ____________

Dear Principal/Registrar:

The following named pupil has enrolled at _______________ High School as of _______________________, 19__.

Please send his/her transcript of grades, diagnostic or special placement information (including immunization and health records if available) to the above address.

| | | |
|---|---|---|
| ______________________ | ____________________ | __________ |
| Name of Pupil | Census No. | D.O.B. |
| ____________________________________________ | | __________ |
| Name of Parents | | Grade |

This pupil attended your school (date) _______________________
at which time he/she was in the ______________ grade(s).

Sincerely yours,

Registrar

Sample 5
High School

COPY

## AUTHORITY FOR RELEASE OF INFORMATION

I, ________________________________, hereby authorize the release of the necessary school records to ______________ High School. This is in accordance with the Education Amendment Act of 1974.

________________________________
Parent/Guardian or Adult Student

________________________________
Date

A student over 18 years of age may sign for himself/herself. If the student is under 18, the the parent or guardian MUST sign.

I, ________________________________, hereby authorize the release to a third party, if necessary, for the educational advancement of the above named student.

________________________________
Parent/Guardian or Adult Student

________________________________
Date

Example 6 COPY

## NOTIFICATION TO PARENT OF RECORD
## TRANSFER COMPLETED

Dear Parent:

This is to notify you that the following information from your son/daughter, ____________________
Student's Name

school record was transferred to ______________________________ at ______________________

on ______________________________.
Date

Records Sent

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

According to 25 CFR-36.14b, this information may be transferred without parental consent, but you have the right to be notified of that transfer, and to receive an unofficial copy upon request, at your own expense.

__________________________________________ School Official

__________________________________________ Address

5.18

Example 7 COPY

## ANNUAL NOTIFICATION TO PARENTS REGARDING STUDENT RECORDS

Dear Parent:

You, as a parent, (or your son/daughter if 18 or over), have the right to review all of your son's/daughter's records at any time and should contact the principal for an appointment if you wish to do so. School personnel will be available to review the content with you. Copies may be requested for the cost of copying.

So that the staff of ______________________________ School can

- -provide the most appropriate program for your son/daughter
- -be aware of his/her needs and interests
- -assist him/her in later job placement
- -assist in gaining entrance to other programs or schools

records are maintained which include information about your son/daughter and his/her school program. These records are kept in the care of designated custodians in school offices and dormitories, and are available only to the teachers and staff working with the student. If your son/daughter should transfer to another school, these records will be sent to the new school upon request.

During the school year, ______________________ School prepares a school roster, Yearbook, and newspapers which identify school club members, honor students, members of our sports teams and interesting highlights of the year. At times our school may prepare publications or newspaper releases which use "directory information" about our students. Directory information in our school includes the name of the student, date and place of birth, major areas of study, awards received, participation in activities and sports, height and weight of members of athletic teams, dates of attendance and previous school of attendance. According to federal law, this directory information as identified above may be publicly released without permission of parents. However, if you do not wish to have this information released about your son/daughter you may so request. If this notification is not received, we will assume that your permission is given to use your son's/daughter's directory information as described above.

If you, or your adult age student, believe something in the record is inaccurate or misleading, you have the right to request that a correction be made and to add comments of your own. At any time when an agreement cannot be reached, you may contact the principal and request a hearing. If you or your adult age student is adversely affected by the hearing, further appeal rights are provided by 25CFR-Part 2.

Principal's Signature

Date

Example 8 COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

________________________
Date

Mr. & Mrs. Parent
Address
City, State, Zip Code

Dear Parent:

This is to advise you that the records of your son/daughter ______ ________________________ will be purged as follows:

1. Antecdotal records
2. Records of hearings
3. Non-essential information
4. ________________________
5. ________________________

If you wish to review these records before being destroyed, you must notify the school within 60 days from the date of this letter.

Sincerely yours,

Principal/Registrar

## Checksheet for Administrators on Confidentiality of Records* for the Handicapped

**Note:** The following should be reviewed periodically but not each time a request is received to review/inspect records.

| PL 94-142 and FERPA Regulations** | COMPLETED (Please check) | |
|---|---|---|
| 121a.561 | | 1. Appointment of Confidentiality Records Officer |
| 99.5<br>121a.561 | | 2. Annual Notification (FERPA LEA is to notify, 94-142 SEA is to notify) to parents of students and/or eligible student in attendance of: |
| 99.5(a)(1)<br>121a.561 | | a. the right to inspect and review the education records, |
| 99.11<br>121a.562 | | b. procedures of parents and eligible students to inspect and review records, |
| 99.5(a)(2)(ii) | | c. the understanding that the education agency may not deny access to an education record, |
| 99.5(a)(2)(ii) | | d. the description of circumstances in which the agency feels it has a legitimate cause to deny a request for a copy of such records, |
| 99.8(a)<br>121a.566(a) | | e. a schedule of fees for copies, |

*This checksheet was developed by the participants at the Due Process and Confidentiality Workshop conducted in Phoenix, Arizona, September 18, 1977, sponsored by the Arizona State Dept. of Education, Div. of Special Ed. and the Southwest Regional Resource Center, Salt Lake City, Utah. Compiler and editor, George T. L. Holt.

**Regulation numbers beginning 99. refer to the regulations issued for "The Family Education Rights and Privacy Act, 1974;" numbers beginning 121a. are from the Rules and Regulations for Public Law 94-142, August 23, 1977.

| PL 94-142 and FERPA Regulations | COMPLETED (Please check) | |
|---|---|---|
| 99.5(a)(2)(iv)<br>121a.561(2) | | f. a listing of the types and locations of education records maintained by the educational agency and the titles and addresses of the officials responsible for those records, |
| 99.5(a)(3)<br>121a.572(b) | | g. not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or eligible student except as permitted by law, regulation or policy. |
| 99.5(a)(4)<br>121a.563 | | h. maintaining the record of disclosure of personally identifiable information from the education records and permitting a parent or an eligible student to inspect the record, |
| 99.5(a)(5)<br>121a.567 | | i. providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing, |
| 99.6(a)(1)<br>121a.561 | | j. where copies of the school policy can be obtained, |
| 99.6(a)(2)<br>121a.575 | | k. the right to file complaints under the law concerning alleged failures by the educational agency to comply with the requirements of the Family Education Rights and Privacy Act. |
| 121a.561(b) | | l. notice to be published/announced before any major identification, location or evaluation activity. |
| 99.6(b)<br>121a.561(a)(1) | | 3. Provide Annual Notification to effectively notify parents of students identified as having a primary or home language other than English. |

| PL 94-142 and FERPA Regulations | COMPLETED (Please check) | |
|---|---|---|
| 121a.572(c) | | 4. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's and LEA's policies and procedures for collection, storing and using personally identifiable information. |
| 99.31(a)(1)<br>121a.572(d) | | 5. Each school district shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. |
| 99.5(a)(2)(iv)<br>121a.565 | | 6. Each school district shall provide parents on request a list of the types and locations of education records collected, maintained or used by the school district. |
| 99.11<br>121a.562 | | 7. Parents and eligible students have the right to have: |
| 99.11(a)<br>121a.562(a) | | a. access to education records without unnecessary delay (within 45 calendar days), |
| 99.11(b)(1)<br>121a.562(b)(1) | | b. an explanation and interpretation of the records, |
| 99.11(b)(2)<br>121a.562(b)(2) | | c. a copy of the education records if not in violation of stated school policy (see 2d), |
| 121a.562(b)(3) | | d. a representative of the parent inspect and review records, |
| 99.11(c)<br>121a.562(c) | | e. the agency presumes that the parent has the authority to inspect and review records relating to his/her child unless the agency has been advised otherwise. |

| PL 94-142 and FERPA Regulations | COMPLETED (Please check) | |
|---|---|---|
| 121a.573 | | 8. The school district shall inform parents when personally identifiable information collected, maintained or used is no longer need to provide educational services. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address and phone number, his/her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitations. (Note: In informing the parents about their rights under this section, the agency should remind the parents that the records may be needed by the child or the parents for social security benefits or other purposes.) |
| 99.32(a)and(b)<br>121a.563 | | 9. Each school district shall keep a record of parties obtaining access to education records collected, maintained or used (except access by parents and authorized employees--see #5) including the name of the party, the date access was given, and the purpose for which the party is authorized to use the record. |
| 99.12(b)<br>121a.564 | | 10. If more than one child is on an education record the parents only have access to their child's record. |

# Checksheet for Confidentiality Officers
# on Confidentiality of Records
# for the Handicapped

**Note:** The following should be reviewed periodically but not each time a request is received to review/ inspect records.

| Federal Regulations | COMPLETED (Please check) | |
|---|---|---|
| 121a.572(c) | | 1. Training<br>All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures on the protection of education records at the collection, storage, disclosure and destruction stages. |
| 99.5<br>121a.561 | | 2. Annual Notice<br>Parents of students and/or eligible students in attendance are to receive annual notification (FERPA LEA is to notify; 94-142 SEA is to notify). The notification is to have the following conditions/ components: |
| 99.5(a)(1)<br>121a.561 | | a. the right to inspect and review the education records, |
| 99.11<br>121a.562 | | b. procedures of parents and eligible students to inspect and review records, |
| 99.5(a)(2)(ii) | | c. the understanding that the education agency may not deny access to an education record, |
| 99.5(a)(2)(ii) | | d. the description of circumstances in which the agency feels it has a legitimate cause to deny a request for a copy of such records, |
| 99.8(a)<br>121a.566(a) | | e. a schedule of fees for copies, |

| Federal Regulations | COMPLETED (Please check) | |
|---|---|---|
| 99.5(a)(2)(iv)<br>121a.561(2) | | f. a listing of the types and locations of education records maintained by the educational agency and the titles and addresses of the officials responsible for those records, |
| 99.5(2)(3)<br>121a.572(b) | | g. the policy of not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or eligible student except as permitted by law, regulation, or policy, |
| 99.5(a)(4)<br>121a.563 | | h. the policy (statement) of maintaining the record of disclosures of personally identifiable information from the education records and permitting a parent or an eligible student to inspect the record, |
| 99.5(a)(5)<br>121a.567 | | i. the policy (statement) of providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the record or a hearing, |
| 99.6(a)(1)<br>121a.561 | | j. the statement of where copies of the school policy can be obtained, |
| 99.6(a)(2)<br>121a.575 | | k. the statement of the right to file complaints under the law concerning alleged failures by the education agency to comply with the requirements of the Family Education Rights and Privacy Act of 1974, |
| 121a.561(b) | | l. notice to be published/announced before any major identification, location, or evaluation activity. |

| Federal Regulations | COMPLETED (Please check) | |
|---|---|---|
| 99.31(a)(1)<br>121a.572(d) | | 3. Notice of Access List<br>A current listing is available for public inspection that contains the names and positions of the employees within the school district who may have access to personally identifiable information. |
| 121a.572(b) | | 4. Designation of Confidentiality Officers<br>The Confidentiality Officer has been designated by the school administration (written designation preferable). |
| 99.5(a)(2)(iv)<br>121a.565 | | 5. List of Types and Locations of Information<br>A list of the types and locations of education records collected, maintained, or used by the school district is current and available to parents or eligible students on request. |
| | | Note: The following should be reviewed each time a request is received to review/inspect/transfer education records. |
| 99.4(a)<br>121a.574 | | 6. The student has attained the age of 18 years or is attending an institution of post-secondary education, if so, the student shall thereafter only be accorded the rights stated to the parents (FERPA). The state is to have policies regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type of severity of the disability (PL 94-142). |
| 99.11<br>121a.562 | | 7. Release of Information for Review or Inspection WITHOUT Record of Access<br>Records may be reviewed at the request of one of the following without record of access being completed: |

| Federal Regulations | COMPLETED (Please check) |
|---|---|
| 99.31<br>121a.571(b) | |

a. Parent (see #6),
b. Eligible student (see #6),
c. Employee, whose name is on the approved list of the school for access (see #3),
d. An authorized representative of the parents (usually in writing).

8. Release of Information for Review of Inspection WITH Record of Access Completed (see #9)
Records may be reviewed (see #10) at the request of one of the following with the record of access being completed:

a. officials of another school or school system in which the student seeks or intends to enroll (see #11)
b. representatives who identify themselves as:

   (1) the Comptroller General of the United States,
   (2) the Secretary of Health, Education and Welfare,
   (3) the Commissioner of Education (US), the Director of the National Institute of Education, or the Assistant Secretary for Education, OR
   (4) State educational authorities,

c. in connection with financial aid for which a student has applied or which a student has received; PROVIDED that the records only be disclosed for such reasons as:

   (1) to determine the eligibility of the student for financial aid,
   (2) to determine the amount of the financial aid,
   (3) to determine the conditions which will be imposed regarding the financial aid, OR

| Federal Regulations | COMPLETED (Please check) |
|---|---|
| 99.36(a)and(b)<br>121a.571(b) | |

(4) to enforce the terms or conditions of the financial aid,

d. to State and local officials or authorities to who information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. (See State policies or regulations.)

e. to organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aide programs and improving instruction; PROVIDED that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than the representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted.

f. to accrediting organizations in order to carry out their accrediting functions,

g. to comply with a judicial order or lawfully issued subpoena; PROVIDED, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance,

h. to appropriate health/safety/emergency personnel if knowledge of the information is necessary to protect the health or safety of the student or other individuals, PROVIDED, that the following conditions (factors) are all relevant:

(1) the seriousness of the threat to the health or safety of the student or other individuals,

| Federal Regulations | COMPLETED (Please check) | |
|---|---|---|
| | | (2) the need for the information to meet the emergency,<br>(3) whether the parties to whom the information is disclosed are in a position to deal with the emergency, AND<br>(4) the extent to which time is of the essence in dealing with the emergency. |
| 99.32<br>121a.563 | | 9. Record of Access<br>There is a record of access for education records that the school district collects, maintains, or uses that contains the following information (see #7 for Exceptions):<br>a. name of the party,<br>b. the date access was given, AND<br>c. the purpose for which the party was given authorization to use the records. |
| 99.33 | | 10. Limitations on Disclosure<br>An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclossed will not disclose the information to any other party without the prior written consent of the parent or eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made. This does not preclude an agency or institution listed in #8 from disclosing personally identifiable information with the understanding that the information will be redisclosed to other parties; PROVIDED that the recordkeeping requirements of #9 are met. |

| Federal Regulations | COMPLETED (Please check) | |
|---|---|---|
| 99.34(a) | | 11. Transferring Information to Other Schools<br>Officials of one school may transfer education recrods to officials of another school if one of the following conditions exist:<br>a. the school makes a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last know address of the parent or eligible student,<br>b. the school receives a request for the transfer of the records that was initiated by the parent or eligible student at the sending agency or school, OR<br>c. when the agency or school includes a notice in its policies and procedures formulated in the annual notice (see #2) that it forwards education records on request to a school in which a student seeks or intends to enroll; the school or agency does not have to provide any further notice of the transfer. |
| 99.8<br>121a,566 | | 12. The fee of _______ per page will be charged to parents or eligible students for copies made if the fee does not effectively prevent the parents from exercising their right to inspect and review the records. The school may not charge a fee to search for or to retreve information on education records. |
| 99.13<br>121a.573 | | 13. Destruction of Information<br>When information is no longer needed to provide educational services, the parents shall be informed. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address and phone number, his/her grades, attendance record, classes attended, |

| Federal Regulations | COMPLETED (Please check) | |
|---|---|---|
| | | grade level completed and year completed may be maintained without time limitations. (Note: In informing the parents about their rights under this section, the agency should remind the parents that the records may be needed by the child or the parents for social security benefits or other purposes.) |
| 99.11(a)(b)and (c)<br>121a.562 | | 14. Parents and Eligible Student Access Rights<br>Parents and eligible students have the right to have:<br>a. access to education records without unnecessary delay, (within 45 calendar days and before a due process hearing),<br>b. an explanation and interpretation of the records,<br>c. a copy of the education records if not in violation of stated school policy (see 2.g),<br>d. a representative of the parent inspect and review records, AND<br>e. the agency presumes that the parent has the authority to inspect and review records relating to his/her child unless the agency has been advised otherwise. |
| 99.12(b)<br>121a.564 | | 15. Records on More Than One Child<br>If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information. |

# SELF-ADMINISTERED DUE PROCESS GUIDE

| Routine Procedures | YES | NO |
|---|---|---|
| 1. Are parents informed as soon as a child is identified as needing evaluation/diagnosis for possible special education services? | | |
| 2. Are the parents advised orally and in writing that the schools have a responsibility to provide an appropriate education for their child? | | |
| 3. Are parents advised orally and in writing whenever the school proposes to initiate or change or refuses to initiate or change their child's identification, evaluation or educational placement? | | |
| 4. Have procedures been instituted to communicate all correspondence and procedures in the parent's native language including the use of readers and interpreters if needed? | | |
| 5. Are evaluation (including testing)* and placement staff aware that prior to conducting an individual evaluation, written parental permission must be obtained? | | |
| 6. In the request for parental permission to individually evaluate a child, does the staff explain to the parents: | | |
| -the evaluation (including testing) procedures to be used? | | |
| -why an evaluation is needed? | | |
| -what the evaluation hopes to accomplish? | | |
| -limitations of the evaluation? | | |
| -how the obtained data will be used? | | |
| 7. Procedures have been established to ensure that all evaluations will be as culturally nondiscriminatory as possible including | | |
| -selection of instruments? | | |
| -administration of instruments? | | |
| -selection of administering personnel? | | |
| -interpretation of obtained data? | | |

*Throughout this guide, the term evaluation includes individual testing.

| | | YES | NO |
|---|---|---|---|
| 8. | Have provisions been made to notify parents that they have the right to examine all relevant records regarding the identification, evaluation and educational placement of the child? | ___ | ___ |
| 9. | Have procedures been adopted to name one school person to serve as the major contact person between the schools and parents? | ___ | ___ |
| 10. | Are parents invited to be participants in all educational planning meetings for their child? | ___ | ___ |
| 11. | Are parents given the opportunity to bring a friend or professional with them to all education planning meetings? | ___ | ___ |
| 12. | Are attempts made to schedule all educational planning meetings at a time convenient for both parents and school personnel? | ___ | ___ |
| 13. | After a child has been evaluated and a special placement has been recommended, does the chairperson of the evaluation and/or placement team have responsibility to tell the parents, both orally and in writing | | |
| | -the results of the evaluation and the recommended placement? | ___ | ___ |
| | -an explanation of why the recommended placement is the least restrictive learning setting for the child? | ___ | ___ |
| | -the implications of the proposed placement, including the expected general educational achievements of the child and possible career goals? | ___ | ___ |
| | -the alternative placements available to the child? | ___ | ___ |
| | -that the placement decision will be reviewed periodically, at least annually? | ___ | ___ |
| 14. | Does the placement team or chairperson attempt to communicate to parents in understandable language? | ___ | ___ |
| 15. | Are the parents provided with a written copy of the placement recommendations and the specific education program proposed? | ___ | ___ |
| 16. | Are parents informed orally and in writing of their right to obtain an independent evaluation of their child at public expense if necessary and present those findings to the public school? | ___ | ___ |

| | YES | NO |
|---|---|---|
| 17. If so, are parents advised | | |
| -to contact a local/state parent's group? | ___ | ___ |
| -of the location of local/regional/state facilities that can conduct evaluations? | ___ | ___ |
| 18. If the parents indicate that they do not agree with the school's evaluation or proposed placement, is a genuine effort made by the school to explain, orally, its position and to show the parents why the evaluation is considered valid, or why the proposed placement is the best one for the child? | ___ | ___ |
| 19. Are parents informed orally and in writing of their right to a formal hearing if they contest the school's recommendations? | ___ | ___ |
| 20. Are the steps to be taken to exercise that right fully explained to parents? | ___ | ___ |
| Prior to the Hearing | | |
| 1. Are parents informed in writing of the role of the hearing officer including | | |
| -the responsibility to hear both sides? | ___ | ___ |
| -a limit on evidence to be presented at the hearing? | ___ | ___ |
| -the responsibility of making a decision regarding: 1) whether there has been a prejudicial departure from evaluation and placement procedures, and 2) sufficient cause exists for the decision? | ___ | ___ |
| -the responsibility to engage in fact finding? | ___ | ___ |
| 2. Are parents informed in writing that they have the following rights | | |
| -to bring counsel,friend, or expert witness? | ___ | ___ |
| -to examine all school records upon which the school made its decisions? | ___ | ___ |
| -to request that certain school personnel be present at the hearing and of their right to examine the school's witnesses? | ___ | ___ |
| -to participate in the decision for an open or closed hearing? | ___ | ___ |
| -to present findings from an independently conducted evalaution? | ___ | ___ |
| -to have their child present, if appropriate? | ___ | ___ |

| | YES | NO |
|---|---|---|
| 3. Are parents informed in writing that a record of the hearing would be made available to them upon request? | ___ | ___ |
| 4. Are parents informed about when they will be notified of the hearing decision and about the subsequent recourse available to them? | ___ | ___ |
| 5. Are parents advised orally and in writing that they have the right to appeal the decision of the hearing officer(s) and of the procedures that are to be used? | ___ | ___ |

# 6. TEACHER PERFORMANCE

# STANDARDS

# PERFORMANCE STANDARDS
# FOR
# TEACHERS

6.1

Bureau of Indian Affairs
Navajo Area Office
Division of Education

Donald Dodge, Area Director
Rebecca H. Martgan, Assistant Area Director (Education)
Ernest L. Magnuson, Chief, Branch of Curriculum and Instruction

# ACKNOWLEDGEMENTS

The Navajo Area , Division of Education, gratefully acknowledges the following who have helped in developing these performance standards for teachers:

| | |
|---|---|
| J. Wesley Eby, Chairman | Education Specialist, Navajo Area Office |
| M. Louise Lee, Chairman (NAU Workshop 1977) | Teacher Supervisor, Wingate Elementary School |
| Lynn Batchelor | Education Specialist, Shiprock Agency |
| Glenda Covington | Teacher, Dennehotso Boarding School |
| Don Dougherty | Education Specialist, Eastern Navajo Agency |
| Kathleen Eghoan | Teacher, Cottonwood Day School |
| Ella George | Education Specialist, Ft. Defiance Agency |
| Sammie Evans | Education Specialist, Western Navajo Agency |
| Charlotte Greenstone | Teacher, Hunters Point Boarding School |
| Grace Henry | Teacher, Tohatchi Boarding School |
| Jack Jewell | Principal, Leupp Boarding School |
| Delbert Lanham | Teacher, Many Farms High School |
| Larry Marsh | Teacher, Dzilth-na-o-dith-hle Boarding School |
| Joan Reed | Education Specialist, Chinle Agency |
| Daisy Roberts | Teacher, Tuba City Elementary Boarding School |
| John Walters | Education Specialist, Leupp Boarding School |
| Elaine Weston | Teacher, Teecnospos Boarding School |
| Nina Wyatt | Teacher, Wingate Elementary School |

## Consultant, NAU Workshop 1977

| | |
|---|---|
| Dr. Robert A. Mortenson | University of Nebraska, Omaha |

# PERFORMANCE STANDARDS FOR TEACHERS

## MAJOR JOB ASSIGNMENTS

I. Instructional Planning
II. Classroom Instruction
III. Assessment and Evaluation
IV. Counseling and Interacting
V. Personal, Professional, and Work Skills

6.3

**Note:** Performance indicators denote satisfactory performance for the GS-9 teacher. Teachers at the GS-5 and GS-7 levels are expected to meet these standards; however, they are to receive direct guidance and assistance from their supervisors as delineated in their position descriptions.

**I. MAJOR JOB ASSIGNMENT:** Instructional Planning

**Position Description:** A. Prepares yearly instructional outline(s) and related daily lesson plans covering relevant units of study and specifying objectives, activities, and evaluative methods/instruments for both group and individual instructional programs.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| I. A.1. Prepares yearly instructional outline(s) organized into related units of study for each discipline. | I. A.1.1. The teacher prepares and submits yearly outline(s) by the end of the sixth week of school. |
| | I. A.1.2. The teacher organizes yearly instructional outline(s) in sequential order using Area, Agency, school, and other guidelines. |
| | I. A.1.3. The teacher adjusts yearly outlines, as necessary, to meet the assessed needs of the students. |
| I. A.2. Develops daily lesson plans consistent with yearly outlines for both group and individual instructional programs. | I. A.2.1. The teacher submits plans to the supervisor prior to instruction. |
| | I. A.2.2. The teacher, in preparing plans, includes behavioral objectives, activities, materials/resources, evaluation, and a tentative time schedule. |
| | I. A.2.3. The teacher, in preparing plans, includes group and/or individual instruction to meet the assessed needs of students. |

## II. MAJOR JOB ASSIGNMENT: Classroom Instruction

Position Description: A. Teaches students by selecting, developing, adapting, and implementing appropriate instructional methods and techniques utilizing available resources to provide for academic achievement.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| II. A.1. Teaches students in order that they may achieve academically. | II. A.1.1. Students attain the Navajo Area educational standards in math and reading. (Non-attainment will be explained to the supervisor). |
| | II. A.1.2. Students show progress in all areas through a variety of tests, including the CTBS, according to their abilities. |
| | II. A.1.3. The teacher uses a variety of materials and techniques. |
| | II. A.1.4. The teacher uses flexible grouping to help meet the individual needs and interests of the students. |
| | II. A.1.5. The teacher adapts materials and methods to meet the individual needs of the students. |

**II. MAJOR JOB ASSIGNMENT:** Classroom Instruction

**Position Description:** B. Provides learning experiences in assigned subject areas which develop cognitive, affective, and psychomotor skills that are appropriate to the needs and interests of all the students in the class.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| II. B.1. Teaches students for optimum growth in cognitive, affective, and psychomotor skills. | II. B.1.1. The teacher uses teaching strategies which involve all the senses and a variety of thought processes (e.g., perceiving, listening, speaking, interpreting, analyzing, synthesizing, convergent and divergent thinking, and evaluation). |
| | II. B.1.2. The teacher uses teaching activities which include opportunities for students to develop positive attitudes and values. (e.g., role-playing, dramatization, behavior standards, bulletin boards. Note: Values and attitudes are "caught" or "taught" more by example than by planned instruction.) |
| | II. B.1.3. The teacher uses teaching activities which include opportunities for students to develop coordination and to develop large and small muscles. (e.g., penmanship, rhythmic activities, jumping rope, physical education activities.) |

II. MAJOR JOB ASSIGNMENT: Classroom Instruction

Position Description: C. Plans techniques and/or methods that will lead students into decision-making, problem solving skills.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| II. C.1. Develops decision-making and problem-solving skills of students. | II. C.1.1. The teacher involves the students in instructional planning, evaluating instruction, establishing classroom behavior standards, and planning for special activities.<br>II. C.1.2. The teacher provides the students with opportunities for engaging in self-directed activities. |

## II. MAJOR JOB ASSIGNMENT: Classroom Instruction

Position Description: D. Develops and conducts instruction within an environment that provides and promotes opportunities for the students to develop rapport, inter-relationships, self-discipline and a positive self-image.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| II. D.1. Guides students in the development of their social skills. | II. D.1.1. The teacher and student(s) exhibit mutual respect through positive interactions. (Also student/student.)<br>II. D.1.2. The teacher and student(s) share ideas and experiences, as a part of planned instruction, in small groups as well as in the whole class. |
| II. D.2. Guides students in the development of their personal skills. | II. D.2.1. Students work and/or complete assignments independently.<br>II. D.2.2. Students exhibit self-control.<br>II. D.2.3. The teacher recognizes individual and group accomplishments in a positive manner.<br>II. D.2.4. The teacher demonstrates sensitivity to the individual student's feelings and differences. (e.g., not "putting a child down", accepting the child's background, not showing favoritism.) |

II. MAJOR JOB ASSIGNMENT: Classroom Instruction

Position Description: E. Supervises assigned students as scheduled, or provides for their supervision, throughout the academic day and/or activity to provide for the safety, health, and welfare of the students in compliance with school, Agency, and Area guidelines.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| II. E.1. Supervises students throughout the academic day and/or activities. | II. E.1.1. The teacher supervises, or provides for the supervision of, students throughout the school day both in and out of the classroom. |
| II. E.2. Provides for the students' health, safety, and welfare. | II. E.2.1. The teacher maintains accurate attendance records. |
|  | II. E.2.2. The teacher reports student absenses in accordance with school policies and procedures. |
|  | II. E.2.3. The teacher reports student health problems in accordance with school policies and procedures. |
|  | II. E.2.4. The teacher reports safety hazards and/or maintenance problems in accordance with school policies and procedures. |

**III.MAJOR JOB ASSIGNMENT:** Assessment and Evaluation

**Position Description:** A. Continuously evaluates individual and group academic progress through the use of criterion-referenced tests, periodic standardized tests, oral tests, and/or other relevant evaluative methods/instruments.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| III.A.1. Evaluates individual and group academic progress. | III. A.1.1. The teacher assesses assigned students at the beginning of the school year, or upon enrollment, following approved assessment procedures. |
| | III. A.1.2. The teacher evaluates achievement of instructional objectives on a regular basis using a variety of techniques and instruments. |
| | III. A.1.3. The teacher conducts individual student conferences concerning academic progress at a minimum of once every nine weeks. |
| | III. A.1.4. The teacher administers standardized tests, as required and/or needed. |

III. MAJOR JOB ASSIGNMENT: Assessment and Evaluation

Position Description: B. Uses alternative instruction to meet individual needs.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| III. B.1. Uses alternative instruction, as necessary, to meet individual needs. | III. B.1.1. The teacher considers individual student needs and plans various instructional strategies to meet those needs. |
| | III. B.1.2. The teacher, using evaluation results, changes instructional methods/techniques/materials/grouping to achieve the objective(s) of a previously taught lesson. |

III. MAJOR JOB ASSIGNMENT: Assessment and Evaluation

Position Description: C. Maintains required records in accordance with applicable regulations.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| III. C.1. Maintains required records. | III. C.1.1. The teacher accurately maintains required records in accordance with applicable regulations (cumulative folders, report cards, etc.) |

IV. **MAJOR JOB ASSIGNMENT:** Counseling and Interacting

Position Description: A. Maintains control of assigned class(es) and handles discipline independently except for chronic or extreme behavior problems.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| IV. A.1. Maintains control of students. | IV. A.1.1. The teacher consistently enforces classroom and school behavior standards/regulations. |
| | IV. A.1.2. The teacher maintains control of class(es) by planning and pacing the instructional day to eliminate potential problems (e.g., wasted time, discipline, vandalism, AWOL's). |
| | IV. A.1.3. The teacher shows consistency, honesty, and fairness in dealing with students (e.g., applying the same standards to all students). |
| IV. A.2. Disciplines independently. | IV. A.2.1. The teacher resolves discipline problems with minimum disruption to class activities. |
| | IV. A.2.2. The teacher seeks assistance, as needed, in handling and/or resolving chronic or extreme behavior problems. |

## IV. MAJOR JOB ASSIGNMENT: Counseling and Interacting

**Position Description:** B. Counsels individual students within established guidelines, using background information concerning each student to provide an effective instruction/learning cycle as pertains to student behavior and progress.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| IV. B.1. Counsels students. | IV. B.1.1. The teacher provides for frequent positive interaction with each student. |
| | IV. B.1.2. The teacher shows evidence of using background information, as needed, regarding students' families, interests, past academic achievements, health, etc. |
| | IV. B.1.3. The teacher counsels the students in appropriate behavior, positive interaction with others, use of leisure time, career-type activities, school as preparation for life, etc. |
| | IV. B.1.4. Students, in general, evidence effective counseling by showing greater respect for others, accepting the contributions of others, not "making fun" of others, etc. |

IV. MAJOR JOB ASSIGNMENT: Counseling and Interacting

Position Description: C. Makes progress reports to parents and confers with parents and other concerned individuals.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| IV. C.1. Reports evaluation results to concerned parties/persons in a timely manner. | IV. C.1.1. The teacher conducts conferences with concerned parties (e.g., parents, students, counselors, supervisors/administrators, other teachers, and other school personnel) regarding student progress. |
| | IV. C.1.2. The teacher prepares and sends reports to parents according to Agency and/or school policies. |
| IV. C.2. Confers with interested parties/persons. | IV. C.2.1. The teacher explains school's policies and program to community people and visitors when requested by administration |

V. MAJOR JOB ASSIGNMENT: Personal, Professional, and Work Skills

Position Description: A. Participates in educational activities that improve personal skills for providing better services to the students.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| V. A.1. Improves professional skills by participating in educational activities. | V. A.1.1. The teacher attends workshops and in-service training sessions sponsored by Area/Agency/school, as required.<br>V. A.1.2. The teacher participates in Area/Agency/school workshops, in-service programs, and committees, as requested. |

V. MAJOR JOB ASSIGNMENT: Personal, Professional, and Work Skills

Position Description: B. May give work direction to one or more educational aides.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| V, B.1. Directs instructional activities of the educational aides. | V. B.1.1. The teacher plans and coordinates all instruction and related activities with the educational aide. |
| | V. B.1.2. The aide is involved a majority of the time in instructional activities with the students. |
| | V. B.1.3. The teacher, with the aide, evaluates instructional activities and student progress on a daily basis. |

V. MAJOR JOB ASSIGNMENT: Personal, Professional, and Work Skills

Position Description: C. Provides for the proper care and use of assigned supplies and equipment.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| V. C.1. Utilizes supplies and equipment properly. | V. C.1.1. The teacher demonstrates conservation in use of supplies, books, materials, and equipment. |
| | V. C.1.2. The teacher exercises care and consideration in use of audio-visual equipment and aids. (e.g., storing equipment properly; allowing bulbs to cool before turning off projectors; observing rules of safety regarding use; returning borrowed supplies, aids, and materials promptly; etc.) |
| V. C.2. Educates students in proper care and use of supplies, equipment and facilities. | V. C.2.1. The teacher provides evidence of teaching the proper care and use of supplies, equipment, and facilities. |

V. MAJOR JOB ASSIGNMENT: Personal, Professional, and Work Skills

Position Description: D. Serves as a professional example to fellow educators, students, and community.

| RESULTS EXPECTED | PERFORMANCE INDICATORS |
|---|---|
| V. D.1. Serves as a professional example by not permitting personal behavior to adversely affect his/her proficiency on the job. | V. D.1.1. The teacher is on duty with assigned students except in cases of dire emergency. |
| | V. D.1.2. The teacher responds constructively to suggestions and criticisms by acknowledging areas of weakness and making plans for improvement. |
| | V. D.1.3. The teacher's personal appearance and dress conform, when applicable, to school policies and dress codes. |
| | V. D.1.4. The teacher serves as an acceptable model for the students in his/her use of the English language. |
| | V. D.1.5. The teacher uses the Navajo language only, as necessary, to enhance the educational and emotional development of the students. |
| | V. D.1.6. The teacher demonstrates professionalism by interacting positively with colleagues and community people. |

# 7. MEMORANDA

JAN 1 9 1979

Agency Superintendents
School Superintendents

Acting Area Director, Navajo Area

Special Education Policy - STEP System

The STEP (Sequential Tasks for Educational Planning) system will be required of all special education classes commencing with the 1979-80 school year. In the meantime the special education teachers should begin to implement the STEP system so they will become thoroughly familiar with the program.

A plan is being developed by the Area and Agency Special Education Specialists which will define the forms needed, use and storage of forms and how strands are to be submitted.

If you have any questions concerning STEP, please contact your local education specialist or Laurine Ruleau at the Area Education Office.

/S/ TED S. KOENIG

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BEST COPY AVAILABLE

Assistant Area Director (Administration)
Attention: Area Property & Supply Officer

Assistant Area Director (Education)

Equipment for Special Education

The following curriculum guides are being submitted because there appears to be a misunderstanding of the kind of equipment required for programs for the handicapped students.

1. STEP (Sequential Tasks for Educational Planning)
2. TMH Curriculum for Very Special Children
3. Each is Special

Due to the size of the STEP system, it was screened page by page to elicit the different kinds of equipment for the program. This system has been mandated for use in all special education classes. Following is a list of equipment necessary for implementation of the above programs.

1. Audio Flashcard Reader - Acoustophones or headsets.
2. Balls (foot, tether, volley, basket, golf, tennis and soccer).
3. Basic Physical Education Equipment:
    - Balance Beam
    - Horizontal Bar
    - Horizontal Ladder
    - Laddered Bars
    - Parallel Ladders
    - Rocker Board
4. Bats
5. Bicycle
6. Bookcase
7. Broom - Dust pan
8. Buffer, electric
9. Calculators for students
10. Camera, instamatic - polaroid
11. Carpeting

12. Cassette Player
13. Clock
14. Cupboards
15. Desks, Teacher & student
16. Dish washer
17. Duplicator
18. Electric typewriter for students
19. Equipment cart
20. File cabinets
21. Filmstrip projector
22. Garbage can
23. Garbage disposal
24. Hoe
25. Hose - water
26. Hospital scale
27. Iron
28. Ironing board
29. Jumbo pegs & pegboard
30. Language Master - one per classroom
31. Lawn mower
32. Mat, tumbling
33. Medicine cupboard
34. Mirror
35. Movie projector - one per classroom
36. Overhead projector
37. Play telephone
38. Pots & pans
39. Potty chair
40. Radio
41. Rake
42. Record player
43. Refrigerator
44. Rototiller
45. Rhythm instrument
46. Sewing machine
47. Scissors
48. Shelves, open/closed
49. Shovel
50. Show & Tell machine
51. Slide projector
52. Stairs
53. Stove
54. System 80
55. Tables and chairs
56. Tape recorder

57. Television
58. Toilet bowl brush
59. Trampoline
60. Tricycle
61. Tunnel (for young children)
62. Vacuum Cleaner
63. Wardrobe
64. Washer/dryer
65. Wrenches - sockets

Since we are held accountable for special education equipment, it is my recommendation that this equipment have a special tag similar to special projects.

Because of the unique programs for the handicapped students, and the severity of the handicaps, most of the instruction is accompolished through a multi-media approach. In special education all teaching is on an individual basis, and the media equipment is used daily. The multi-media equipment must semain in the special education classrooms, therefore, each classroom must be completely furnished to meet the needs of the handicapped youngsters.

As other programs develop, the need for additional equipment will change depending on the type of programs that are established. This office will keep you informed of any program changes as it effects equipment purchasing.

Enclosures

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cc: File
005
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547
N32 - Bobby Dean
N33 - Jerry Walker
N34 - Barbara DeLoach
N35 - Emma Gable
N36 - Tom Armstrong

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6
UNITED STATES GOVERNMENT

# *Memorandum*

TO : Acting Chief, Branch of Special Education DATE: JUN 29 1979

FROM : Norman Wilcox, Education Specialist

SUBJECT: Subcommittee Conclusions on Report Cards and Diplomas

In accordance with the committee to develop a Special Education handbook for Navajo Area, a meeting was held on June 15, 1979 in Gallup, New Mexico. The findings of the subcommittee on report cards and diplomas for Special Education students receiving services in Bureau schools, Navajo Area have reached the following conclusions:

1. Special Education students receiving diplomas for Junior High and High School graduation will receive the same diploma as non-handicapped students.

2. All grading for report card purposes will reflect the schools current policy on grading; i.e., form, grading type, (letter or numbers, etc.).

This is based on the premise that according to law, you cannot discriminate against persons based on their handicapps, regardless of their condition.

Norman A. Wilcox

7.5 193

5010-110
*Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan*

NOV 1 3 1979

School Superintendent

4200-Education
EDA 8-6

Access to Medical Records

Principals
Attn: Special Education Personnel

The attached memorandums regarding BIA representative access to medical records maintained by the Indian Health Service is being redistributed for your information and reference.

The memorandums detail the background and decision to allow BIA representatives access to Indian Health Service records in order to comply with the requirements of P.L. 94-142, The Education For All Handicapped Children Act of 1975.

Please insure that your Special Education personnel review these memorandums and recognize that any information received under this agreement must be handled as confidential material subject to all the requirements of the Privacy Act and P.L. 94-142.

Please contact Barbara DeLoach if you have any questions.

School Superintendent

[S/ J. Elgan Dribelblis]

Attachment

Superintendent's Reading File
BDeLOACH/11-9-79/gmt
Reading
Subject
Chrono
M/F

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

Date: December 29, 1977

Reply to
Attn of: Privacy Act Coordinator, MAIHS

Subject: Disclosure to BIA Contractors for Evaluating Handicapped Indian Children

To: All Privacy Act Coordinators

The attached material concerning the above-subject is forwarded for your information and reference guide.

Coralie J. Smith/

Coralie J. Smith
Employee & Labor Relations Officer
Navajo Area Indian Health Service

Attachment

*Retyped for copy purposes.

MEMORANDUM 11/30/77

TO: All IHS Area/Program Privacy Act Coordinators and Alternates
Thru: All IHS Area/Program Directors

FROM: IHS Privacy Act Coordinator

SUBJECT: Disclosure of Medical Information to BIA Contractors for Evaluating Handicapped Indian Children

Attached herewith is a legal opinion issued by the PHS Office of General Counsel. This opinion should guide you in handling disclosures of medical information to BIA in accordances with Public Law 94-142, "Education for all Handicapped Children Act of 1975."

If you have any questions please do not hesitate to call.

Mozart J. Spector/

Mozart J. Spector

Attachment

*Retyped for copy purposes

MEMORANDUM

TO: Mr. Mozart Spector 11/29/77
Privacy Act Coordinator
Indian Health Service

FROM: Senior Attorney
Public Health Division

SUBJECT: Privacy Act--IHS Medical Records--Disclosures to BIA Contractors for Evaluating Handicapped Indian Children (DF #16A)

This refers to the November 22, 1977, meeting among representatives of the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA) to discuss access by BIA to IHS medical records systems.

As explained at the meeting, under the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401 et seq.), BIA has the responsibility of identifying and evaluating handicapped Indian children and providing each with a suitable education program. The IHS Health and Medical Records Systems (09-15-0019) contains health and medical information, including examination, diagnostic and treatment data concerning handicapped Indian children. BIA desires that its designated representatives be given access to these record systems so that BIA need not duplicate the relevant medical data already in the possession of IHS.

The Privacy Act (5 U.S.C. 552a et seq.), as you know, permits certain unconsented-to disclosures including those which are disclosed for a "routing use" as listed in the systems notice published in the Federal Register 5 U.S.C. 552a(b) (3)). A routine use is defined by the Privacy Act with respect to the disclosure of a record as "the use of such record for a purpose which is compatible with the purpose for which it was collected". One of the purposes of the IHS Health and Medical Records System is to render appropriate medical care and treatment. In our view, disclosure of medical data for the purpose of identifying and evaluating handicapped children so that individual education programs can be developed for such children is compatible with the purpose for which the information was collected. Thus, IHS medical records may be disclosed as a "routine use" to BIA representatives for the purpose of carrying the latter's responsibilities under the Education for All Handicapped Children Act of 1975 provided such disclosures come within a routine use published in the system notice.

The IHS Health and Medical Records System Notice (42 FR 52182) provides that among the routine use disclosures are those to:

> "Federal and non-federal school systems which serve American Indian and Alaskan Native children for the purpose of student health maintenance."

At the November 22 meeting, Dr. Mars (IHS) stated, and we concur, that the development of individual education programs for handicapped children enrolled in BIA schools, which necessarily includes physical therapy and counseling, comes within the scope of "student health maintenance" as the term is used in the routine use quoted above. Thus, disclosures of IHS medical records to BIA representatives for the stated purposes are authorized under an existing routine use.

At the meeting we were advised that the BIA identification and evaluation of handicapped Indian children is to be conducted by BIA contractors and that the contracts expressly provide that the contractor is subject to the Privacy Act. We are of the opinion that if BIA designates its contractors as the authorized BIA representatives of its school system to whom routing use disclosures from the IHS Health and Medical Records Systems should be made for the purpose of carrying out BIA's responsibilities under the Education for All Handicapped Children Act of 1975, then IHS may make such disclosures to the designated contractors.

The conclusions set forth in this memorandum have been discussed with and concurred in by Mr. Tim White of the Business and Administrative Law Division of this office.

Howard Walderman/

Howard Walderman

*Retyped for copy purposes

MEMORANDUM

TO: Directors, Area/Program Offices 11/30/77
Director, ORD Tucson
Director, Data Processing Service Center

FROM: Director, Indian Health Service

SUBJECT: IHS Support of Education for All Handicapping Children Program

In 1975, Congress passed the Education for all Handicapped Children Act, P.L. 94-142, the purpose of which was to assure a free appropriate public education to all handicapped children. The Bureau of Indian Affairs (BIA) has the major responsibility for implementing this Act on behalf of Indian children. The goal of this act and the efforts of BIA in its implementation have my full support. I have designated Dr. Ted Marrs, MCH Consultant for the Albuquerque Area, as the project director for all matters affecting handicapped children including the IHS efforts in support of the BIA implementation of P.L. 94-142. These efforts will be made in conjunction with the overall IHS maternal and child health focus provided by Dr. William Carlile. Dr. Marrs can be reached on FTS 474-2400.

The initial hurdle faced by BIA in implementing this program is the identification and the evaluation of Indian chidlren that may qualify for inclusion in this program. IHS has, as a result of its operations, much information in the form of health records which can be invaluable both for identifying possibly handicapped children and the evaluation of these children. How these records could be properly utilized in light of the requirements of the Privacy Act was the topic of a November 22, 1977, meeting between representatives of BIA, IHS and their respective legal councils.

It was the concensus of that meeting that BIA, while implementing P.L. 94-142, would be a routine user of the IHS Health and Medical Records Systems as described in the Federal Register (42 RP 52182, September 29, 1977). Routine use number 3 permits these records to be disclosed to "Federal and non-federal school systems which serve American Indian and Alaska Native children for the purpose of student health maintenance." For purposes of this program, BIA is a Federal school system. Also, it is the generally held opinion in the medical community that the "health maintenance" of handicapped children includes the services mandated by P.L. 94-142. Though it was not specifically discussed at the meeting, this later point would also be applicable to State school systems implementing the Act.

Therefore, all IHS personnel are to cooperate fully in disclosing to the BIA and its agents those IHS medical records needed for the identification and evaluation of possibly handicapped children. This cooperation is to take place in full compliance with the Privacy Act including the requirement that each disclosure to a routine user be properly documented in the individual's medical record. Such documentation is not needed when properly executed consent form covering the child is in the child's record. The use of consent forms is, therefore, preferable to reliance on the routine user test though this preference should not be used to delay implementation of the program.

Privacy Act requirements are applicable to the BIA. Therefore, Privacy Act protections cover medical records disclosed to the BIA. It is my understanding that any State implementing P.L. 94-142 must develop a State plan which includes the same Privacy Act protections that apply to Federal agencies.

In many cases, it is expected that medical evaluations of children identified under this program will be needed. The scheduling of these evaluations will have to take into account not only medical criteria and available resources but also competing non-critical routine procedures such as school and work required physicals. In scheduling medical evaluations under this Act, you should consider both the mandatory target dates of the Education for All Handicapped Children program and the possible long-term beneficial consequences for the child.

Please bring this memorandum to the attention of all affected personnel under your direction including Service Unit Directors, hospital and clinical directors and medical records personnel. Privacy Act questions concerning the implementation of this program should be directed to your respective Area or Program Privacy Act Coordinator, Questions that cannot be handled by your Privacy Act Coordinator should be directed to Mr. Mozart Spector, IHS Privacy Act Coordinator. Mr. Spector can be reached on FTS 443-1180.

The implementation of P.L. 94-142 is tied to a specific time table. Questions or problems which might delay full IHS cooperation in this important health effort are to be dealth with immediately. I have full confidence in the willingness and the desire of all IHS personnel to cooperate and I would not like this needed cooperation to suffer as a result of any question or problem over which IHS has any control.

Emery A. Johnson, M.D.
Assistant Surgeon General

| | |
|---|---|
| IHS Area/Program Privacy Act Coordinators | Mr. George Scott, BIA |
| IHS Area/Program Alternate Privacy Act Coordinators | Dr. Carlile, Phoenix |
| IHS Executive Staff | Dr. Marrs, Albuquerque |
| Mr. Walderman, CGC | Mr. Spector |

*Retyped for copy purposes

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## XII. PLACEMENT IN PRIVATE SCHOOLS

### A. Policy

It shall be the policy of the Bureau of Indian Affairs that handicapped children in private schools and facilities will be provided special education and related services (in conformance with an Individualized Education Program) as required at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the BIA as a means of carrying out the requirements of P.L. 94-142 requiring the provision of special education and related services to all handicapped children within the BIA, and (ii) in all instances the Bureau of Indian Affairs shall determine whether such schools and facilities meet standards that apply to the BIA and that children so served have all the rights they would have if served by the BIA.

The recommendation that a BIA-responsible child be placed in a private school will be made by the Educational Placement Committee in consultation with and with the informed, written consent of the parent(s).

The following conditions shall also apply with respect to this policy:

1. When a handicapped child is offered a Free Appropriate Public Education in a BIA education facility that is readily accessible to the home community and the parents waive that opportunity in favor of private school placement, the parents shall assume full financial responsibility for the child's education.

2. If a parent contends that she/he has been forced, at the parent's own expense, to seek private schooling for the child because an appropriate program does not exist, and the responsible agency disagrees, that disagreement and the question of who remains financially responsible is a matter to which the due process procedures apply.

3. Whenever handicapped children are placed in private schools or facilities by local BIA education agencies, the Bureau of Indian Affairs shall take steps to assure that the children have all the rights they would have if educated in a BIA school.

4. Provision are being made for private schools to receive a copy of the BIA standards, and revisions as they occur.

COPY

5. The BIA will provide opportunity for private school participation in development and revision of standards relating to Special Education.

B. BIA Procedures for Implementation

The Bureau of Indian Affairs will utilize the following procedures in implementing the policies regarding placement in private schools:

1. Provisions have been made for BIA Areas to contract with private schools for Special education and related services when it is necessary to effectively implement the Government's obligation to provide a free and appropriate public education as outlined in this program plan.

2. An administrative policy issuance to all BIA Areas will describe the additional policies and procedures regarding private school placement brought about as a result of P.L. 94-142 regulations.

3. The BIA Central Office and Area Offices will monitor local educational agencies for compliance with these requirements.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

RECEIVED
JUL 10 1 22 PM '79

IN REPLY REFER TO:
DIVISION OF EDUCATION
WINDOW ROCK, ARIZONA

Memorandum JUL 12 1979

To: Area Director, Navajo Area Office

From: Director, Office of Indian Education Programs

Subject: Authorization to Purchase Portable Classroom Buildings

In order that the Navajo Area, Bureau of Indian Affairs, achieves full and related special education services for P.L. 94-142, it becomes necessary to purchase portable classroom buildings. Therefore, the purchase of such buildings are approved to be made through the use of 3100 special education funds.

Earl J. Barlow

RECEIVED
1979 JUL 16 AM 11:21
AREA DIRECTOR'S OFFICE
NAVAJO AREA OFFICE
WINDOW ROCK, AZ.

7,15

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

To: Area Directors

From: Assistant Secretary - Indian Affairs

Subject: Needed Employee Quarters for Special Education Teachers

It has been brought to our attention that the lack of employee quarters in certain BIA schools is hampering the employment of teachers to implement P.L. 94-142.

It is obvious that the Special Education Program cannot be initiated and conducted in locations where teachers cannot be housed in FY '79. I consider this to be an emergency situation. Therefore, I am suthorizing you to use any Education funds available for procurement and installation of mobil-type housing units to be used pending the justification and appropriation of funds fo[illegible] employee quarters.

Signed: Forrest J. Gerard

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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Navajo Area Office
P.O. Box 1060
Gallup, New Mexico 87301

RECEIVED
MAY 2 11 12 AM
DIVISION OF EDUC
WINDOW ROCK, ARIZONA

IN REPLY REFER TO:
Budget

APR 27 1979

Memorandum

To: Assistant Area Directors ✓
Agency Superintendents

From: ACTING Area Director

Subject: Employment Ceiling for the Program "Special Education for the Handicapped"

In his memorandum (copy enclosed) dated January 5, 1979, subject: Employment Ceiling - FY 1979 and 1980, the Acting Deputy Commissioner of Indian Affairs provided each Area its share of the increase in FTP employment ceiling for the above subject program. The Navajo Area allocation is 65. However, any increases by intra-Area transfer of available employment ceiling from other programs must be fully justified.

The allocation provides the authority to establish FTP positions for FY 1979 and to retain these positions through FY 1980 as the need may continue to exist. Therefore, as implementation of P.L. 95-561 becomes a reality and all program requirements for employment ceiling are actually known, you may begin to identify positions to Element 18, Special Education for the Handicapped. Please follow the special instructions contained in my memorandum dated January 17, 1979, concerning this program.

Please refer questions on the above to the Area Budget Office.

Ted L. Kaemf

Enclosures

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

JAN 5 1979

RECEIVED
ADMINISTRATION
JAN 11 1979
NAVAJO
AREA OFFICE

Memorandum

To:
All Area Directors ✓
Central Office Directors
Field Administrative Officer
Manager, Arts and Crafts Board
Flagstaff Administrative Office

From: Acting Deputy Commissioner of Indian Affairs

Subject: Employment Ceiling - FY 1979 and 1980

The attached tabulations reflect your new ceilings for Fiscal Year 1979 and tentative ceilings for FY 1980. To determine the 1979 full-time permanent employment ceiling several factors were considered:

FULL-TIME PERMANENT EMPLOYMENT CEILING - TABLES II AND III

1. Adjusted employment as of September 30, 1978

   Actual employment, less reserve for PL 93-638 and Departmental programs for Youth Conservation Corps and Young Adult Conservation Corps. Use of ceilings for these are restricted to the specific purposes.

2. Congressional action

   An additional 232 permanent positions were added by Congressional action. This will involve 219 full-time permanent ceilings.

3. Administrative action

   Actions were taken to reflect tentative needs for reorganization, conversions, and new and expanded programs.

The Bureau has been given two allowances for ceiling: August 15, 1978 and December 11, 1978. Tables II and III reflect Bureau needs. These needs exceeded the August allowances by 504. In the August reduction direct cuts were absorbed by the Central Office and Centralized Schools, (144).

The balance of 360 was prorated to those areas where the adjustment could be made from permanent to other-than-permanent ceiling. The additional cut of 274 in the December allowance made our total reduction 778. The December reduction was distributed in ratio to the 12,777 base.

Your 1979 FTP employment ceiling will become effective only as it conforms to hiring limitations of Departmental memorandum dated November 8, 1979 (copy attached).

## OTHER-THAN-PERMANENT EMPLOYMENT CEILING -- TABLE IV

Other-than-permanent ceiling in the August allowance was 5,850 -- an increase of 145 over actual employment. This increase was given in ratio to the decrease taken in permanent ceiling by the areas. The December allowance was 5,735. The revised ceiling was prorated to the distribution of the 5,850 base.

## TENTATIVE FTP EMPLOYMENT CEILING - TABLE V

Tentative data for 1980 are for information only and are subject to change. In prior years Congress has requested a listing of full-time permanent positions for the budget year. Your tentative FTP employment ceiling will be used as a base for projecting this report. The request will be covered by separate memorandum.

Attachments

M. E. Seneca, Jr.

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JAN 11 1979
NAVAJO
AREA OFFICE

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## BUREAU OF INDIAN AFFAIRS
### Full-Time Permanent Employment Ceiling
### Fiscal Year 1979

|  | FTP Empl | Reserve P.L. 93-638 | YCC/TACC | Adjusted FTP Empl. | Congressional Action |  | Siletz | Admin. Action | Program Needs | 638-R | YCC/TACC | BIA Needs |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  |  |  | Handicapped Children | Trust Respon. |  |  |  |  |  |  |
| Asst. Sec'y/Commr | 46 |  |  | 46 |  |  |  | +14 | 60 |  |  | 60 |
| Education........ | 66 |  |  | 66 |  |  |  |  | 66 |  |  | 66 |
| Indian Services.. | 76 |  | - 5 | 71 |  |  |  | + 6 | 77 |  | + 5 | 82 |
| Tribal Resources | 63 |  |  | 63 |  |  |  |  | 63 |  |  | 63 |
| Trust Responsibilities | 85 |  |  | 85 |  | +24 |  | + 6 | 115 |  |  | 115 |
| Administration... | 371 |  |  | 371 |  |  |  | +35 | 406 |  |  | 406 |
| Sub, Central Office | 707 |  | - 5 | 702 |  | +24 |  | +61 | 787 |  | + 5 | 792 |
| Aberdeen......... | 1,338 | - 77 | - 2 | 1,259 | + 52 |  |  |  | 1,311 | + 77 | + 2 | 1,390 |
| Albuquerque...... | 744 | - 26 | - 9 | 709 | + 12 |  |  |  | 721 | + 26 | + 9 | 756 |
| Anadarko......... | 478 |  |  | 478 | + 3 |  |  | +10 | 491 |  |  | 491 |
| Billings......... | 611 | - 9 | - 1 | 601 | + 5 |  |  |  | 606 | + 9 | + 1 | 616 |
| Eastern.......... | 322 | - 2 | - 2 | 818 | + 10 |  |  |  | 328 | + 2 | + 2 | 332 |
| Juneau........... | 704 | - 20 |  | 684 | + 5 |  |  |  | 689 | + 20 |  | 709 |
| Minneapolis...... | 234 |  | - 2 | 232 | + 4 |  |  |  | 236 |  | + 2 | 238 |
| Muskogee......... | 445 |  | - 2 | 443 | + 4 |  |  | +12 | 459 |  | + 2 | 461 |
| Navajo........... | 4,180 |  | - 1 | 4,179 | + 65 |  |  |  | 4,244 | + 18 | + 1 | 4,263 |
| Phoenix.......... | 1,667 | - 7 | - 1 | 1,659 | + 15 |  |  |  | 1,674 | + 7 | + 1 | 1,682 |
| Portland......... | 972 | - 3 | - 3 | 966 | + 15 |  | +5 |  | 986 | + 3 | + 3 | 992 |
| Sacramento ...... | 192 |  |  | 192 |  |  |  |  | 192 |  |  | 192 |
| Sub, Areas...... | 11,887 | -144 | -23 | 11,720 | +190 |  | +5 | +22 | 11,937 | +162 | +23 | 12,122 |
| SIPI............. | 86 |  |  | 86 |  |  |  |  | 86 |  |  | 86 |
| IAIA............. | 67 |  |  | 67 |  |  |  |  | 67 |  |  | 67 |
| Haskell.......... | 157 |  |  | 157 |  |  |  |  | 157 |  |  | 157 |
| Sub, Cent. Schools | 310 |  |  | 310 |  |  |  |  | 310 |  |  | 310 |
| Arts and Crafts. | 15 |  |  | 15 |  |  |  |  | 15 |  |  | 15 |
| Flagstaff Adm. Office | 42 |  |  | 42 |  |  |  |  | 42 |  |  | 42 |
| 12-20-79 |  |  |  |  |  |  |  |  |  |  |  |  |
| Total, Indian Affairs | 12,961 | -144 | -28 | 12,789 | +190 | +24 | +5 | +83 1/ | 13,091 | +162 | +28 | 13,281 |
|  |  |  |  |  |  | +219 |  |  |  |  |  |  |

1/ See attachement - TABLE II, page 2

7.20

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# 8. CODING INFORMATION

| Element | Title and Definition |
|---|---|
| 18 | Education of the Handicapped. A program function to provide for appropriate educational programs for handicapped Indian children located both within the Bureau operated schools and the jurisdiction of the Bureau of Indian Affairs as defined and in compliance with PL 94-142. (Replaces 1162 and 1654.) |

Components

10 Inventory and Research. See definition for standard component--10 as it applies to Element 18.

12 Child Find. Personal services and other costs to provide for child find activities within the jurisdiction of the Bureau of Indian Affairs either with or without liaison with other agencies, federal, state, tribal or local. This is to include dissemination costs.

13 Child Assessment. Personal services and other costs to determine the specific educational needs of the pupil, which will provide the basis for the Individual Education Program. (This does not include program evaluation or program assessment.)

14 Audit. Personal services and other costs to make an official examination and verification of financial and program records.

15 Evaluation. Personal services and other costs to determine the effectiveness, efficiency, and relevance of programs and projects in terms of stated obejctives. Includes testing when primarily for program evaluation.

16 Dissemination. Personal services and other costs to inform the public about the condition and progress of education in the school system.

17 Parental Involvement. Personal services and other costs to involve parents in the education projects affecting their children, including working with parent councils and other parent groups.

18 Due Process Hearings. Personal services and other costs related to providing due process hearings.

19 Monitoring. Personal services and other costs related to providing monitoring for compliance to appropriate legislation.

20 Investigation and Planning. (Standard Component) Personal services and other costs to prepare or revise plans, or to assist other individuals or organizations to prepare or revise plans for the development or management of a region, community, project, resource, enterprise or similar endeavor. Resulting plans may be comprehensive in scope, or they may be limited to a particular sector, project, feature or function.

Includes surveys, investigations, analyses and related activities to identify and quantify needs and opportunities, establish objectives and goals, evaluate alternatives (including benefit-cost, and similar evaluations), reaching decisions on what is to be included in the plan and drafting and printing the plan. Planning commonly utilizes the reports, etc., prepared under the Inventory and Research component, but normally includes more intensive and detailed investigations and analysis directed toward the particular conditions and circumstances within the scope and nature of the plan under development.

21 Materials Development. Personal services and other costs to develop materials for use in specific programs. This will include writing materials or assembling materials from various sources into a usable form.

22 Curriculum Development. Personal services and other costs to develop suitable curricula for specific needs.

23 Transportation. Personal services and other costs for the transportation of students to and from school daily or at the beginning and ending of the school term. Special trips for students to go to and from home.

Includes payments to GSA and others for student travel, commercial student fares, charter services, travel and per diem of BIA personnel to accompany students. This includes the travel and per diem costs for non-Bureau chaperones.

Does not include transportation of students for other purposes which is accounted for under the applicable component.

24 Employee Quarters. Cost of furnishing employee quarters, including new and replacement furniture, furnishings, and portable floor covering; to be applicable only where the Education program has this responsibility.

Does not include refrigerator and stove which is accounted for under Element 63.

25 Inservice Staff Training. Personal services and other costs to contribute to the professional or occupational growth and competence of staff members during the time of their service to a school.

Includes both the time and other costs of those giving and those receiving the training.

54 Media Services. Personal services and other costs for the operation of a library, media or resource center located at an elementary, secondary or post-secondary school.

Includes supplies and materials, travel and per diem, books, films, slides, tapes, equipment repair and purchase of new or replacement equipment.

61 Consultant. Personal services and other costs involved in providing educational methods/techniques to parents, teachers, or other instructional staff working with handicapped children.

62 Itinerant. Personal services and other costs involved in providing direct education services to handicapped children in the regular classroom.

63 Resource Room. Personal services and other cost involved in providing direct education services to handicapped children in a special class for 2 hours or less per day.

64 Self-Contained. Personal services and other costs involved in providing direct education services to handicapped children in a special class for ½ day or more.

65 Special Day School. Personal services and other costs involved in providing direct education services to only handicapped children in a special day school setting.

66 Institutionalized. Personal services and other costs involved in providing direct education services to handicapped children in 24 hour a day care facilities.

67 Hospital/Homebound. Personal services and other costs involved in providing direct education services to handicapped children in a home or hospital setting.

77 Student Activities. Personal services and other costs for the student activity center. Refers to students in a boarding situation.

Includes recreational material and supplies, equipment, repair, pupil transportation, travel and per diem, food, and lodging costs related to student activities.

78 Attendance. Personal services and other costs to improve attendance at school and to deal constructively with the problems of pupils which involve the home, school, and community.

79 Home Living. Personal services and other costs for the home living and dormitory operations.

Includes expenses such as travel and per diem, materials and supplies, clothing, linens and bedding, laundry supplies, contracts, equipment purchase and repair used in dormitory operations and the recreational expenses directly related to dormitory operations including food and lodging.

80 Transportation - Activities. Personal services and other costs to convey pupils to and from school activities, either between home and school, or on trips related to school activities. (Note: This component is defined differently than Component 23 which does not include ". . . trips related to school activities.")

81 Clothing. Personal services and other costs to provide clothing for a specified number of children.

82 Food. Personal services and other costs for the food service program.

Includes travel and per diem, materials and supplies, contractual services, food, and equipment.

Does not include the food costs of off-campus feeding programs, or food for home living.

83 Pupil Personnel Services (Guidance and Counseling). Personal services and other costs for services which are concerned with the total welfare of pupils.

Includes all related expenses, travel and per diem, specialized equipment, supplies and materials related to pupil services.

84 Health. Personal services and other costs to provide students medical and dental care including psychiatry, nursing, and other health services.

90 General Operations. Personal services and other costs to provide goods and services to achieve program element goals, but which cannot be identified directly with any other single component within the element. Personal services and other costs charged to this component will normally be distributed to other components within the element, if any, at the close of the fiscal year. (Note: This component may be used to classify contract costs where it is impossible to identify costs under a contract to the specific components within the elements being contracted.)

Includes such activities and costs as:

(a) Program direction and management at the element level including development and issuance of policy and procedural guidelines and general planning, scheduling, and supervision of the work.

(b) Liaison work with non-Indian policy, administrative or advisory organizations, agencies and groups.

(c) Informal on-the-job training (see standard component 195 for formal staff training). (Does not apply to Education.)

(d) Equipment and supplies that cannot be charged directly, on a practical basis, to other components, including the repair and maintenance of equipment.

(e) Maintaining records and preparing reports, correspondence, and other activities of a "housekeeping," administrative, or other supporting nature.

(f) Leave, where it is not practical to identify leave directly to a single component.

Does not include any time, leave or other costs that can be reasonably identified directly with a specific component within the element or with any other element-component combination.

91 Indian Policy Groups. Personal services and other costs to maintain liaison with, provide technical services and guidance to, and receive policy and procedural guidance from, Indian advisory and policy groups concerned with the achievement of program element goals and objectives.

Includes both the costs of providing BIA services to the Indian groups, and the BIA-funded costs of the Indian groups for travel, per diem, and other expenses in meeting with BIA personnel and others.

Does not include costs defined specifically with any component under Element 21, AID TO TRIBAL GOVERNMENT; costs defined specifically with Component 1820, Investigations and Planning; or any other costs that can be identified with a specific component within the element.

92 Contract Monitoring. Personal services and other costs to review and evaluate work performed under contract to assure that work is performed in accordance with the provisions, stipulations, specifications or other requirements set forth in the contractual documents.

Includes observations, tests, measurements, examination of work records, and other monitoring procedures. Personnel doing contract monitoring normally require technical knowledge and skills related to the type of work being performed under the contract.

Does not include costs associated with the preparation and awarding of contracts, administrative work associated with computing and processing payments, the preparation of contract modification or amendments, and similar work of an administrative character. (See Element 72, ADMINISTRATIVE SERVICES.)

95 Formal Staff Training. Personal services and other costs to provide formal training to BIA staff. Formal is defined as training authorized on form OF-170 (same form as SF-170 or SF-182).

Includes the expenses of the trainee such as salary, tution, books, travel and per diem, and other fees and expenses resulting directly from the training program. For formal training conducted within the Bureau it also includes the costs of formally designated training units or teams when these costs are not included in costs shown on the OF-170 as recoverable by the training unit on an intrabureau refund, transfer, or other basis from the organization unit to which the trainee is assigned.

Does not include the costs of informal on-the-job training, training provided to non-BIA staff, or costs of developing and managing training and career development programs.

# 9. ALLOWABLE COSTS AND APPLICABLE COMPONENTS

## ALLOWABLE COSTS
## ELEMENT 18

| COMPONENT | DESCRIPTION | 3100 | Part B* |
|---|---|---|---|
| 10 | Inventory & Research - see standard definition as it applies to Element 18 | | |
| 12 | Child Find - Costs associated with Child Find procedures of P.L. 94-142 | Salaries<br>Per diem/travel<br>Dissemination<br>(Public announcements, duplication costs, etc.) | Salaries<br>Per diem/travel<br>Dissemination<br>(Public announcements, duplication costs, etc.) |
| 13 | Child Assessment - Costs associated with individual student assessments which will provide the basis for the Individual Education Program (IEP) | Initial Assessments<br>Salaries<br>Per diem/travel<br>Contracts<br>Evaluation Materials<br>Diagnostic costs | Reevaluations<br>Salaries<br>Per diem/travel<br>Contracts<br>Evaluation Materials<br>Diagnostic costs |
| 15 | Evaluation - Costs associated with determining or evaluating program effectiveness. Includes testing when primarily for program evaluation. This component does not include individual student evaluation determining handicap. | Salaries<br>Per diem/travel<br>Contracts | Salaries<br>Per diem/travel<br>Contracts |
| 16 | Dissemination - Costs associated with informing the public on the special education programs, services, etc. of the school system. | Salaries<br>Per diem/travel<br>Public Announcements<br>Duplication Costs | Salaries<br>Per diem/travel<br>Public Announcements<br>Duplication Costs |

*Full salaries may be coded to Part B (P.L. 94-142) funds (except where indicated by %) if person(s) is working full time in special education program.

| COMPONENT | DESCRIPTION | 3100 | Part B |
|---|---|---|---|
| 17 | Parental Involvement - costs associated with involving parents in their child's educational program. Includes visits to parents regarding parental consent and special correspondence. | Salaries<br>Per diem/travel<br>Correspondence | Salaries<br>Per diem/travel<br>Correspondence |
| 18 | Due Process Hearings - Costs associated with providing due process hearings for P.L. 94-142 | Salaries<br>Hearing Officers<br>Per diem/travel<br>Legal Services<br>Independent Evaluations (as requested by the hearing officer) | Salaries<br>Hearing Officers<br>Per diem/travel<br>Legal Services<br>Independent Evaluations (as requested by the hearing officer) |
| 19 | Monitoring - Costs associated with compliance monitoring of a special education program or service. | Salaries<br>Per diem/travel | Salaries<br>Per diem/travel |
| 20 | Investigation & Planning - Costs associated with preparing or revising for the development or management of a region, community, project, etc. See Standard Definition as it applies to Element 18. | Salaries<br>Per diem/travel<br>Contracts | Salaries<br>Per diem/travel<br>Contracts |
| 21 | Materials Development - Costs associated with developing or assembling materials for use in a specific program. This component should only be used for materials developed for handicapped students or for use in a handicapped program. | Salaries<br>Per diem/travel<br>Materials/supplies<br>Equipment<br>Duplicating Costs | Salaries<br>Per diem/travel<br>Materials/supplies<br>Equipment<br>Duplicating Costs |
| 22 | Curriculum Development - Costs associated with developing a curricula for a program. This component should only be used for curricula developed specifically for handicapped students or for use in a handicapped program. | Salaries<br>Per diem/travel<br>Materials/supplies<br>Duplicating Costs | Salaries<br>Per diem/travel<br>Materials/supplies<br>Duplicating Costs |

| COMPONENT | DESCRIPTION | 3100 | Part B |
|---|---|---|---|
| 23 | Transportation - Costs associated with transporting handicapped students to and from school daily or at the beginning and end of the school term. Special trips to and from home. | Per diem/travel<br>GSA Contracts<br>Commercial Student Fares<br>Charter Services<br>Specialized Equip. | Per diem/travel<br>GSA Contracts<br>Commercial Student Fares<br>Charter Services<br>Specialized Equip. |
| 24 | Employee Quarters - Costs associated with furnishing special education employee quarters. Applicable only where Education has this responsibility. | New/Replacement Furn.<br>Furnishings<br>Portable Floor Cov. | New/Replacement Furn.<br>Furnishings<br>Portable Floor Cov. |
| 25 | Inservice Training - Costs associated with informal training of staff. | Travel/Per diem<br>Contracts<br>Materials/supplies<br>Duplicating costs | Travel/Per diem<br>Contracts<br>Materials/supplies<br>Duplicating costs |
| 54 | Media Services - Costs associated with the operation of a special education media library or resource center. | Salaries<br>Per diem/travel<br>Supplies/materials<br>Books<br>Films<br>Slides<br>Tapes<br>Equipment & Repair | Salaries<br>Per diem/travel<br>Supplies/materials<br>Books<br>Films<br>Slides<br>Tapes<br>Equipment & Repa |
| 61 | Consultant - Costs associated with providing educational methods/techniques to parents, teachers, or other instructional staff working with handicapped students. Includes costs of psychological services, speech pathology and audiology, physical and occupational therapy, etc. | Salaries<br>Per diem/travel<br>Contracts<br>Materials/supplies<br>Equipment | Salaries<br>Per diem/travel<br>Contracts<br>Materials/supplies<br>Equipment |

| COMPONENT | DESCRIPTION | 3100 | Part B |
|---|---|---|---|
| 62 | Itinerant - Costs associated with providing direct education services to handicapped students in the classroom. Includes costs of speech pathology and audiology, psychological services, physical and occupational therapy, counseling therapy, etc. | Salaries<br>Per diem/travel<br>Contracts<br>Materials/supplies<br>Equipment | Salaries<br>Per diem/travel<br>Contracts<br>Materials/supplies<br>Equipment |
| 63 | Resource Room - Costs associated with providing direct educational services to handicapped students in a special class for 2 hours or less per day. | Teacher Salaries<br>Aide Salaries<br>Contracts<br>Materials/supplies<br>Equipment | Teacher Salaries (%)<br>Aide Salaries<br>Contracts (%)<br>Materials/supplies<br>Equipment |
| 64 | Self-Contained - Costs associated with providing direct educational services to handicapped students in a special class for $^1/2$ day or more. | Teacher Salaries<br>Aide Salaries<br>Contracts<br>Materials/supplies<br>Equipment | Teacher Salaries (%)<br>Aide Salaries<br>Contracts (%)<br>Materials/supplies<br>Equipment |
| 65 | Special Day School - Costs associated with providing direct educational services to only handicapped children in a special day school setting. | Teacher Salaries<br>Aide Salaries<br>Contracts<br>Materials/supplies<br>Equipment | Teacher Salaries (%)<br>Aide Salaries<br>Contracts<br>Materials/supplies<br>Equipment |
| 66 | Institutionalized - Costs associated with providing direct educational services to handicapped students in a 24 hour a day care facility. This component should-be used for educational costs only. | Salaries<br>Per diem/travel<br>Contracts | Salaries<br>Per diem/travel<br>Contracts |
| 67 | Hospital/Homebound - Costs associated with providing direct educational services to handicapped children in a home or hospital settting. | Salaries<br>Per diem/travel<br>Contracts<br>Supplies/materials<br>Equipment | Salaries<br>Per diem/travel<br>Contracts<br>Supplies/materials<br>Equipment |

| COMPONENT | DESCRIPTION | 3100 | Part B |
|---|---|---|---|
| 77 | Student Activities - Costs associated with a student activity center for students in a boarding situation. Includes recreational material and supplies, equipment, repair, pupil transportation, travel and per diem, food, and lodging costs related to student activities. | Salaries<br>Per diem/travel<br>Supplies/materials | Salaries %<br>Per diem/travel %<br>Supplies/materials % |
| 78 | Attendance - Costs associated with improving attendance at school. | Salaries<br>Per diem/travel | Salaries %<br>Per diem/travel |
| 79 | Home Living - Costs associated with home living and dormitory operations. Includes travel and per diem, materials and supplies, clothing, linens and bedding, laundry supplies, contracts, equipment purchase and repair used in dormitory operations and the recreational expenses directly related to dormitory operations including food and lodging. This component should only be used under Element 18 when the costs are for handicapped children. | Salaries<br>Per diem/travel | Salaries<br>Per diem/travel |
| 80 | Transportation - Activities - Costs associated with conveying pupils to and from school activities, either between home and school, or on trips related to school activities. | Per diem/travel | Per diem/travel |
| 81 | Clothing - Costs associated with providing special clothing for handicapped children. | Salaries<br>Clothing | Salaries<br>Clothing |
| 82 | Food - Costs associated with the food service program. Includes travel and per diem, materials and supplies, contractual services, food, and equipment. Does not include the food costs of off-campus feeding programs, or food for home living. | Salaries<br>Per diem/travel<br>Materials/supplies<br>Contracts<br>Food<br>Equipment | Salaries<br>Per diem/travel<br>Materials/supplie<br>Contracts<br>Food<br>Equipment |

| COMPONENT | DESCRIPTION | 3100 | Part B |
|---|---|---|---|
| 83 | Pupil Personnel Services (Guidance & Counseling) - Costs associated with providing services which are concerned with the total welfare of pupils. Includes all related expenses, travel and per diem, specialized equipment, supplies and materials related to pupil services. This component should be used for coding full salaries only if the personnel are working full time with handicapped students. | Salaries<br>Per diem/travel<br>Specialized Equip.<br>Supplies/materials | Salaries<br>Per diem/travel<br>Specialized Equip.<br>Supplies/materials |
| 84 | Health - Costs associated with providing handicapped students medical and dental care including psychiatry, nursing, and other health services. | Salaries<br>Per diem/travel | Salaries<br>Per diem/travel |
| 90 | General Operations - Costs associated with providing program direction and management, liaison work with groups, equipment and supplies that cannot be charged to another component, maintaining records. Does not include any time, leave or other costs that can be reasonably identified directly with a specific component with the element. | Salaries<br>Per diem/travel<br>Equipment<br>Materials/supplies | Salaries %<br>Per diem/travel<br>Equipment<br>Materials/supplies |
| 91 | Indian Policy Groups - Costs associated with maintaining liaison with Indian advisory and policy groups. Includes both the costs of providing BIA services to the Indian groups, and the BIA funded costs of the Indian groups for travel, per diem, and other expenses in meeting with BIA personnel and others. Does not include costs defined under Element 21 (Aid to Tribal Government), Component 1820 (Investigations and Planning), or any other costs that can be identified with a specific component within the element. | Salaries<br>Per diem/travel | Salaries %<br>Per diem/travel |

| COMPONENT | DESCRIPTION | 3100 | Part B |
|---|---|---|---|
| 92 | Contract Monitoring - Costs associated with reviewing and evaluating work performed under a contract. Includes observations, tests, measurements, examination of work records, and other monitoring procedures. Personnel doing contract monitoring normally require technical knowledge and skills related to the type of work being performed under the contract. Does not include costs associated with the preparation and awarding of contracts, administrative work associated with computing and processing payments, the preparation of contract modification or amendments, and similar work of an administrative character. | Salaries<br>Per diem/travel | Salaries<br>Per diem/travel |
| 95 | Formal Staff Training - Costs associated with providing formal training in conjunction with forms OF-170 or SF-170 (Forms to become SF-182). Includes expenses of the trainee such as salary, tuition, books, travel and per diem, and other fees and expenses resulting directly from the training program. For formal training conducted within the Bureau it also includes the costs of formally designated training units or teams when these costs are not included in costs shown on the OF-170 as recoverable by the training unit on an intrabureau refund, transfer, or other basis from organization unit to which the trainee is assigned. Does not include the costs of informal on-the-job training, training provided to non-BIA staff, or costs of developing and managing training and career development programs. | Salaries<br>Per diem/travel<br>Books<br>Tuition | Salaries<br>Per diem/travel<br>Books<br>Tuition |

## Element 18
## Applicable Components

| | 10 | 11 | 12 | 16 | 18 | 19 |
|---|---|---|---|---|---|---|
| 10 | INVENTORY & RESEARCH | INVENTORY & RESEARCH | | INVENTORY & RESEARCH | INVENTORY & RESEARCH | INVENTORY & RESEARCH |
| 11 | | | | | | |
| 12 | | | | | CHILD FIND | CHILD FIND |
| 13 | | | | | CHILD ASSESSMENT | CHILD ASSESSMENT |
| 14 | AUDIT | AUDIT | | AUDIT | AUDIT | AUDIT |
| 15 | EVALUATION | EVALUATION | | EVALUATION | EVALUATION | EVALUATION |
| 16 | DISSEMINATION | DISSEMINATION | | DISSEMINATION | DISSEMINATION | DISSEMINATION |
| 17 | | PARENTAL INVOLVEMENT | | PARENTAL INVOLVEMENT | PARENTAL INVOLVEMENT | PARENTAL INVOLVEMENT |
| 18 | | | | | DUE PROCESS HEARING | DUE PROCESS HEARING |
| 19 | | MONITORING | | MONITORING | MONITORING | MONITORING |
| 20 | INVEST. & PLANNING | INVEST. & PLANNING | | | INVEST. & PLANNING | INVEST. & PLANNING |
| 21 | MATERIALS DEVELOPMENT | MATERIALS DEVELOPMENT | | | MATERIALS DEVELOPMENT | MATERIALS DEVELOPMENT |
| 22 | | CURRICULUM DEVELOPMENT | | CURRICULUM DEVELOPMENT | CURRICULUM DEVELOPMENT | CURRICULUM DEVELOP. |
| 23 | | TRANSPORTATION (STU.) | | TRANSPORTATION (STU.) | TRANSPORTATION (STU.) | TRANSPORTATION (STU.) |
| 24 | | EMPLOYEES QUARTERS | | EMPLOYEES QUARTERS | EMPLOYEES QUARTERS | EMPLOYEES QUARTERS . |
| 25 | | INSERVICE STAFF TRAINING | | INSERVICE STAFF TRAINING | INSERVICE STAFF TRAINING | INSERVICE ST. TRNG. |
| 26 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 27 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 28 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 29 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 30 | | DIRECT INSTRC. SUMMARY | | DIRECT INSTRC. SUMMARY | | DIRECT INSTRC. SUMM. |
| 31 | | AGRICULTURE | | | | AGRICULTURE |
| 32 | | ART | | | | ART |
| 33 | | BUSINESS | | | | BUSINESS |
| 34 | | DISTRIBUTIVE EDUC. | | | | DISTRIBUTIVE EDUC. |
| 35 | | ELEM. EDUC. (GENERAL) | | | | ELEM. EDUC. (GENERAL) |
| 36 | | ENGLISH LANG. ARTS | | ENGLISH LANG. ARTS | | ENGLISH LANG. ARTS |
| 37 | | GIFTED & TALENTED | | GIFTED & TALENTED | | GIFTED & TALENTED |
| 38 | | HEALTH OCCUP. EDUCATION | | | | HEALTH OCCUP. EDUC. |
| 39 | | HOME ECONOMICS | | | | HOME ECONOMICS |
| 40 | | INDUSTRIAL ARTS | | | | INDUSTRIAL ARTS |
| 41 | | MATHEMATICS | | MATHEMATICS | | MATHEMATICS |
| 42 | | MODERN LANGUAGE | | | | MODERN LANGUAGE |
| 43 | | MUSIC | | | | MUSIC |
| 44 | | NATURAL SCIENCE | | | | NATURAL SCIENCE |
| 45 | | OFFICE OCCUPATIONS | | | | OFFICE OCCUPATIONS |
| 46 | | PE, REC., HEALTH | | | | PE, REC., HEALTH |
| 47 | | READING | | READING | | READING |
| 48 | | ROTC | | | | ROTC |
| 49 | | SAFETY & DRIVER EDUC. | | | | SAFETY & DRIVER EDUC. |
| 50 | | SECONDARY EDUCATION | | | | SECONDARY EDUCATION |

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|  | 10 | 11 | 12 | 16 | 18 | 19 |
|---|---|---|---|---|---|---|
| 51 |  | SOCIAL SCI./STUDIES |  |  |  | SOCIAL SCI./STUDIES |
| 52 |  | TECHNICAL EDUCATION |  |  |  | TECHNICAL EDUCATION |
| 53 |  | TRADE & INDUSTR. ED. |  |  |  | TRADE & INDUSTR. ED. |
| 54 | MEDIA SERVICES | MEDIA SERVICES |  | MEDIA SERVICES | MEDIA SERVICES | MEDIA SERVICES |
| 55 |  | STUDENT ACTIVITIES |  | STUDENT ACTIVITIES |  | STUDENT ACTIVITIES |
| 56 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 57 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 58 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 59 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 60 |  |  |  |  |  |  |
| 61 |  |  |  |  | CONSULTANT |  |
| 62 |  |  |  |  | ITINERANT |  |
| 63 |  |  |  |  | RESOURCE ROOM |  |
| 64 |  |  |  |  | SELF-CONTAINED |  |
| 65 |  |  |  |  | SPECIAL DAY SCHOOL |  |
| 66 |  |  |  |  | INSTITUTIONALIZED |  |
| 67 |  |  |  |  | HOSPITAL/HOMEBOUND |  |
| 68 |  |  |  |  |  |  |
| 69 |  |  |  |  |  |  |
| 70 |  |  |  |  |  |  |
| 71 |  |  |  |  |  |  |
| 72 |  |  |  |  |  |  |
| 73 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 74 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 75 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 76 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 77 |  | STUDENT ACTIV. (BRDNG) |  |  | STUDENT ACTIV. (BRDNG) |  |
| 78 |  | ATTENDANCE |  | ATTENDANCE | ATTENDANCE |  |
| 79 |  | HOME LIVING |  |  | HOME LIVING |  |
| 80 |  | TRANSPORTATION (ACTIV.) |  |  | TRANSPORTATION (ACTIV.) |  |
| 81 |  | CLOTHING |  | CLOTHING | CLOTHING |  |
| 82 |  | FOOD |  |  | FOOD |  |
| 83 |  | PUPIL PERSONNEL SERV. |  | PUPIL PERSONNEL SERV. | PUPIL PERSONNEL SERV. |  |
| 84 |  | HEALTH |  | HEALTH | HEALTH |  |
| 85 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 86 |  |  |  |  |  |  |
| 87 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 88 | OPEN | OPEN | OPEN | OPEN | OPEN | OPEN |
| 89 |  |  |  |  |  |  |
| 90 | GENERAL OPERATIONS | GENERAL OPERATIONS | GENERAL OPERATIONS | GENERAL OPERATIONS | GENERAL OPERATIONS | GENERAL OPERATIONS |
| 91 | INDIAN POLICY GROUPS | INDIAN POLICY GROUPS | INDIAN POLICY GROUPS | INDIAN POLICY GROUPS | INDIAN POLICY GROUPS | INDIAN POLICY GROUPS |
| 92 |  | CONTRACT MONITORING |  | CONTRACT MONITORING | CONTRACT MONITORING | CONTRACT MONITORING |
| 93 |  | SAFETY CONVERSIONS |  |  |  |  |
| 94 |  |  |  |  |  |  |
| 95 |  |  |  |  | FORMAL STAFF TRAINING |  |

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# 10. FORMS

The sample forms presented in this section should be of help in keeping accurate student records and complying with legal requirements. An Agency or school which has forms which meet the legal requirements may continue to use its own forms. An important consideration is that all student records reflect compliance with the requirements of the applicable laws, rules and regulations.

# Parent Rights and Responsibilities

You, as a parent of a handicapped child, are assured of the following rights:

- The right to receive prior written notice whenever the agency* plans to change or refuses to change the identification of your child (as handicapped); plans to or refuses to assess your child to determine if he/she is handicapped; plans to or refuses to place your student for special education and related services; or plans to or refuses to provide a free, appropriate public education.
    - The prior notice shall contain a full explanation of all procedural safeguards available to the parents (as contained in this paper), and will explain the agency's reasons for planning or refusing an action, and will provide information on all options considered.
    - The prior notice must inform you of each evaluation procedure, test, record or report the agency used in its proposal or refusal to take action.
    - The prior notice must be understandable by you, and must be provided in your native language.
- The right to see all records of your child related to his/her education.
- The right to obtain an independent educational evaluation of your child. If you disagree with the agency's assessment of your child, you have the right to obtain information from the agency about where an independent educational evaluation may be obtained. The independent educational evaluation will be at no expense to you unless the agency initiates an impartial due process hearing to show that its evaluation was appropriate. If the hearing officer determines that the agency's evaluation was appropriate, then you have the right to the independent educational evaluation, but not at public expense.
    - If the independent educational evaluation is obtained at no expense to you, it must meet all criteria used by the agency for its evaluations.
    - If you obtain an independent educational evaluation at private expense, the results must be used by the agency in your child's education, and can be presented by you as evidence at an impartial due process hearing.
    - An impartial hearing officer may order an independent educational evaluation at public expense as part of a hearing.
- The right (and responsibility) to give informed, signed consent before your child is evaluated for possible placement for special education and related services.
- The right (and responsibility) to give informed, signed consent before your child is placed for special education and related services.

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*Agency means the school or other public agency responsible for providing education to handicapped children or youth.

°The right (and responsibility) to participate in developing your child's Individualized Education Program (IEP) and to participate in the annual review of the IEP.

°The right to a due process hearing before an impartial hearing officer when there is disagreement between you and the agency on any of the matters discussed under prior notice. (The agency also has the same right to call for a hearing.)

°The right to receive information from the agency on low cost or free legal and other relevant services; once you request an impartial due process hearing, the agency must provide such information.

°The right to obtain all evidence and a list of witnesses to be used by the agency five days before the hearing (and the responsibility to provide all evidence and a list of witnesses to the agency five days prior to the hearing);

°The right to be represented by counsel at the hearing (at your expense) and to bring other individuals to the hearing who have special knowledge or training about the problems of handicapped children (at your expense);

°The right to have your handicapped child present at the hearing;

°The right to present evidence and confront, cross-examine and compel the attendance of witnesses;

°The right to request that the hearing be open to the public; otherwise it will be closed to the public;

°The right to obtain a written or recorded verbatim record of the hearing;

°The right to receive a written copy of the hearing officer's decision within 45 days of the time you submitted the written request for the hearing.

°The right to appeal the hearing officer's decision through administrative review by ______________________________(?).

°The right to appeal the decision of the administrative review by bringing civil action in a court of law.

°The right for your child to continue in his/her present placement during the hearing and appeals process, unless the parent or agency agree otherwise.

°The right to enter your child in the agency until all proceedings are completed, if initial entry into the agency is the point of the hearing.

- The right to assurance that your child will be protected against evaluation procedures that are racially or culturally discriminatory;
    - That the evaluation (assessment) of your child will be made by a multidisciplinary team or group of persons;
    - That your child will be assessed in all areas related to the suspected disability, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communication and motor abilities;
    - That no single test will be used to determine if your child is handicapped;
    - That tests will be administered by trained personnel, and will be validated for the purposes for which they are used.
    - That your child will not be placed for special education and related services until a thorough evaluation of the child's strengths and weaknesses has been completed.
- The right to have your child's placement for special education and related services determined by a group of persons, including those who know the child and the meaning of the testing results;
    - To have your child's placement based on the services outlined in the IEP, and in conformity with the least restrictive environment guidelines;
    - To have access to a wide variety of placement options to assure that the specific placement needed by your child is available or is made available;
    - To have your child attend the school he/she would attend if not handicapped, unless the IEP calls for services that cannot be delivered in that school;
    - To have your child participate to the maximum extent appropriate with students who are not handicapped;
    - If your child is placed in a private school by the agency, to receive all the rights the child and parents would have if the child were receiving special education and related services from the agency;
    - To be assured the your child will receive a free, appropriate education at no expense to you if the agency places your child in a private school.
    - To have your child's placement reviewed at least once a year to assure that it continues to meet his/her needs.
- The right to confidentiality of your child's school records;
    - The right to review your child's education records on request (and in no case later than 45 days after your request), and before any IEP meeting or impartial due process hearing;

  - °The right to an annual notice of the agency's compliance with confidentiality requirements;

  - °The right to see the names of authorized agency personnel who may use your child's records (posted at the agency office);

  - °The right to have a list in your child's educational records of any persons other than those on the posted access list who have seen the records;

  - °The right to receive copies of your child's records for the cost of copying; if this cost would prevent you from reviewing the records, then a right to copies at no charge;

- °The right to challenge information in your child's records which you feel is inaccurate, misleading, or violates the privacy or other rights of your child.

  - °If the agency feels the information should remain, you have a right to a hearing at the agency. Should the decision be that the records should remain, you have a right to place a statement in the records; this statement will become part of the record, and will be part of any transfer of the student's records, so long as the disputed portion is transferred.

- °The right to approve, through signature, the transfer of records or the right to review records by a party not listed on the official access list in the school; or the right to deny, through withholding of signature, the right to transfer or review records.

- °The right to be notified in the annual notice if the agency plans to release "directory information" (name of student, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees, etc.) without prior signed parent consent, or if the agency plans to automatically transfer educational records to another agency when the student moves.

- °The right to request that directory information be held confidential; the right to require signed consent before the automatic transfer of student records.

- °The right to be notified when the agency plans to destroy student records, and to obtain copies of the records if desired. (Directory information may be maintained by the agency without limitation.)

Children whose parents are unknown or are unavailable, and children who are wards of the state have the following rights:

- °The right to have a surrogate parent appointed to protect the interests of the child in all educational areas where the natural parent would be involved;

- °The right to have a surrogate parent appointed who has no conflict with the interest of the child (the person may not be an employee of the agency involved in the education or care of the child);

- °The right to have a surrogate parent who has knowledge and skills to insure adequate representation of the child.

If you need more information, contact the agency or the area office, Bureau of Indian Affairs.

Date: ____________

# STUDENT RECORD CHECKLIST

**MINIMUM REQUIREMENTS:**

____ 1. Referral request.

____ 2. Signed parent consent for evaluation with content of notice.

____ 3. Evaluation information that is:

    ____ a. Dated within past three years.

    ____ b. Administered by qualified multidisciplinary group of persons.

    ____ c. Administered in primary language.

    ____ d. Reviewed by multidisciplinary team or group of persons.

    ____ e. Validated for specific purposes for which tests were used.

    ____ f. Child assessed in all areas related to suspected handicap.

____ 4. Learning Disability Eligibility Report (where applicable).

    ____ a. Team composition.

    ____ b. Assessment criteria used.

    ____ c. Observation results.

    ____ d. Written report.

        ____ 1. Clear statement of diagnosis of LD.

        ____ 2. Explanation of procedures used to assess.

        ____ 3. Statement of need for special education.

        ____ 4. Signed by all team members.

____ 5. Individualized Education Program (IEP).

    ____ a. Date written or reviewed is within the last year.

____ b. Participants at meeting.

____ 1. Parent(s) or documentation of school's attempt to involve parents.

____ 2. Teacher.

____ 3. Student (where appropriate).

____ 4. Member of evaluation team or someone who can interpret the evaluation results for first IEP after assessment/reassessment.

____ 5. Supervisory representative.

____ 6. Any other.

____ c. Content of IEP.

____ 1. Present educational performance levels.

____ 2. Annual goals.

____ 3. Short term objectives.

____ 4. LRE

____ 5. Special education services to be provided.

____ 6. Related services to be provided.

____ 7. Extent to which child will be able to participate in regular programs.

____ 8. Dates of initiation and duration.

____ 9. Evalution procedures to determine if short-term objectives are being achieved.

____ 6. Signed parent consent for placement with content of notice.

____ 7. Placement decision that is:

____ a. Result of information obtained from a variety of sources.

____ b. Made by group of persons, including persons knowledgeable about child, meaning of evaluation data and placement options.

____ c. In accordance with IEP.

    ____ d. Made in conformity with least restrictive environment (LRE).

    ____ e. Determined at least annually.

____ 8. Confidentiality Safeguards.

    ____ a. List of persons with access posted in agency.

    ____ b. Secure records.

    ____ c. Trained person in charge of records.

    ____ d. Record of access in each folder.

        ____ 1. Name.

        ____ 2. Date of access.

        ____ 3. Purpose.

____ 9. Release of record consent (where applicable).

____10. Parental consent for any substantial re-evaluation before a substantial change in placement (where applicable).

____11. Optional Records:

1. Medical history when not required for appropriate placement.
2. Social history.
3. Student's written work.
4.
5.
6.
7.

## Bureau of Indian Affairs

## Child Find Referral

To School________________________________ Date_____________

Full Legal Name of Referred Child______________________________

S.E.S. Number (if applicable)___________ Birthdate_____________

Sex___________

Parents' Names______________________________________________

Parents' Address____________________________________________

Reasons for Referral________________________________________

____________________________________________________________

____________________________________________________________

____________________________________________________________

The parents of the above-named child or youth do____ or do not____ know that I am referring their child for special education and related services.

_____________________________
Signature of Person Making Referral

_____________________________
Position

_____________________________
Agency, if applicable

Special Education

Bureau of Indian Affairs
Request For Special Education Services

In-school Referral Date____________

Full Legal Name______________________________ School____________

S.E.S. Number______________________________ Birthdate____________

Grade______________ Sex__________________ Teacher____________

Reason(s) for Referral:______________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________
Signature of Person Making Referral

Certification:

I certify that the Parent/Guardian has been notified of this request for special education services and the reasons for this referral.

____________________ ______________________________
Date Authorized School Official

Note: Pupil Screening Scale maybe attached to this referral for documentation of the need for special education services including a comprehensive student evaluation.

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## BUREAU OF INDIAN AFFAIRS

### Student Screening Scale
### PRESCHOOL AND KINDERGARTEN LEVEL - SHORT FORM A

---

Child's Name:______________________________ Date Rated:___/___/___
Last First Middle

School:____________________ SES #________ Grade:_______ Sex: F M

Teacher - Rater:______________________________ Date Enrolled:___/___/___

Will you kindly review the records, current performance, and educational progress of this student and give consideration to the student as a candidate for placement in a special education program for exceptional children in light of Bureau of Indian Affairs standards for identification and placement. Complete this form and return it to your school principal no later than ___/___/___/

CHECK (✓) ANY OF THE CHARACTERISTICS BELOW WHICH APPLY TO THIS STUDENT:

READINESS SKILLS UNDERDEVELOPED

- ☐ Self-Feeding, Washing Delayed
- ☐ Self-Dressing, Toileting Delayed
- ☐ Language Development Delayed
- ☐ Basic Information Deficient
- ☐ Reading Readiness Delayed
- ☐ Number Knowledge Lacking
- ☐ Drawing/Copying Skills Poor
- ☐ Writing Name, Alphabet, etc., Delayed
- ☐ Fine Motor Skills Underdeveloped (cut, paste, etc.)
- ☐ Gross Motor Skills Delayed (hop, balance, etc.)
- ☐ Slow, Disabled Learner

HEALTH IMPAIRMENTS

- ☐ Visual Problems Suspected
- ☐ Hearing Problems Suspected
- ☐ Crippling Condition______________
- ☐ Dental Problems
- ☐ Specific Health Problem______________
- ☐ Physical Fitness Poor
- ☐ General Health Poor
- ☐ Personal Hygiene

SPEECH IMPAIRMENTS

- ☐ Articulation Difficulties
- ☐ Stuttering
- ☐ Other______________________

BEHAVIORAL PROBLEMS

- ☐ Withdrawn Seriously
- ☐ Aggressive Behaviors
- ☐ Emotionally Immature
- ☐ Dependent Behaviors
- ☐ Hyperactive Behaviors
- ☐ Classroom Discipline Problem
- ☐ Peer Relations Inadequate
- ☐ Short Attention Span
- ☐ Self-Concept Poor
- ☐ Motivation Inadequate
- ☐ Attendance Poor

BACKGROUND FACTORS

- ☐ History of Developmental Delay
- ☐ History of Behavioral Problems
- ☐ History of Academic Problems
- ☐ History of Environmental Disadvantage
- ☐ Cultural Divergence Compounds Problem
- ☐ Multilingualism Compounds Problem
- ☐ Cultural Divergence Explains Problem
- ☐ Multilingualism Explains Problem

GIFTEDNESS

- ☐ Intellectually Gifted
- ☐ Outstanding Talent____________
- ☐ Scholastic Achievement Outstanding

---

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Based upon this review, check one of the four boxes below and sign this form.

____ Student may be gifted and/or exceptionally talented. I have completed and attached a referral form for the gifted and talented.

____ Student is progressing adequately and there are no significant teacher observed signs of a handicapping condition.

____ Student is progressing inadequately but there are no significant teacher observed signs of a handicapping condition. Educational disadvantage, language, lack of exposure, or other problems probably explain his difficulties. I recommend ________________
________________________________________________
________________________________________________

____ Student is progressing inadequately and/or there are some significant teacher observed signs of a handicapping condition. I have completed and attached a detailed rating scale and/or a referral form on this student. I recommend that this student be considered as a candidate for an educational evaluation to determine eligibility for special education.

________________________________
Teacher's Signature

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## STUDENT REFERRAL

Page 3 of 3

(Complete when appropriate and return to school principal.)

Name: ______________________________ Date Rated: ___/___/___
Last First Middle

School: ____________________ Grade: __________ DOB: ___/___/___

Teacher: __________________ Census # __________ CA: ___/___

---

1. Briefly describe in specific terms the academic behavioral, health, and/or speech characteristics which you checked as problems on the first page of this form. (Describe signs of giftedness or outstanding talent if appropriate.)

2. Briefly describe the language and ethnicity of the child and home. Indicate whether multilingualism, cultural divergence, or suspected educational disadvantages are: 1) irrelevant, 2) explanatory, or 3) compounding factors as far as this student is concerned.

3. What do you think caused and/or maintains the student's problems?

4. What special attempts have the school and you made to remediate the student's problems or enrich his education?

5. Describe the student's current academic and behavioral functioning in the classroom - estimate grade equivalence, especially in basic skill areas. Attach samples of student's work and give recent test scores. Discuss strengths as well as weaknesses.

6. What specific questions would you like answered through the disgnostic evaluation?

______________________________
Teacher's Signature

---

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## BUREAU OF INDIAN AFFAIRS

### Student Screening Scale
### ELEMENTARY LEVEL - SHORT FORM B

---

Child's Name: ______________________________ Date Rated: ___/___/___
Last First Middle

School: ______________________ SES # __________ Grade: _____ Sex: F M

Teacher - Rater: ______________________________ Date Enrolled: ___/___/___

Will you kindly review the records, current performance, and educational progress of this student and give consideration to the student as a candidate for placement in a special education program for exceptional children in light of Bureau of Indian Affairs standards for identification and placement. Complete this form and return it to your school principal no later than ___/___/___.

CHECK (✓) ANY OF THE CHARACTERISTICS BELOW WHICH APPLY TO THIS STUDENT

ACADEMIC UNDERACHIEVEMENT

☐ Self-Help Skills (dress, eat, etc.) Delayed
☐ Readiness Skills Delayed
☐ Oral Participation Below Expectancy
☐ Reading Skills Delayed
☐ Handwriting Skills Poor
☐ Spelling Skills Deficient
☐ Classroom Seat Work Unsatisfactory
☐ Arithmetic Skills Delayed
☐ Subject Matter Knowledge Weak __________
☐ Physical Coordination Skills Underdeveloped
☐ Slow, Disabled Learner

BEHAVIORAL PROBLEMS

☐ Withdrawn Seriously
☐ Aggressive Behaviors
☐ Emotional Immaturity/Liability
☐ Hyperactive Behavior
☐ Distractible Behaviors
☐ Classroom Discipline Problem
☐ Peer Relations Inadequate
☐ Self-Concept Poor
☐ Independent Work Skills Inadequate
☐ Motivation Inadequate
☐ Attendance Poor

HEALTH IMPAIRMENTS

☐ Visual Problems Suspected
☐ Hearing Problems Suspected
☐ Cripping Condition __________________
☐ Dental Problems
☐ Specific Health Problem ____________
☐ Physical Fitness Poor
☐ General Health Poor
☐ Personal Hygiene

BACKGROUND FACTORS

☐ History of Developmental Delay
☐ History of Behavioral Problems
☐ History of Academic Problems
☐ History of Environmental Disadvantage
☐ Cultural Divergence Compounds Problem
☐ Multilingualism Compounds Problem
☐ Cultural Divergence Explains Problem
☐ Multilingualism Explains Problem

SPEECH IMPAIRMENTS

☐ Articulation Difficulties
☐ Stuttering
☐ Other ______________________

GIFTEDNESS

☐ Intellectually Gifted
☐ Outstanding Talent ___________
☐ Scholastic Achievement Outstanding

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Bureau of Indian Affairs

Based upon this review, check one of the four boxes and sign this form.

____ Student may be gifted and/or exceptionally talented. I have completed and attached a referral form for the gifted and talented.

____ Student is progressing adequately and there are no significant teacher observed signs of a handicapped condition.

____ Student is progressing inadequately but there are no significant teacher observed signs of a handicapping condition. Educational disadvantage, language, lack of exposure, or other problems probably explain his difficulties. I recommend________________
____________________________________________
____________________________________________

____ Student is progressing inadequately and/or there are some significant teacher observed signs of a handicapping condition. I have completed and attached a detailed rating scale and/or a referral form on this student. I recommend that this student be considered as a candidate for an educational evaluation to determine eligibility for special education.

____________________________
Teacher's Signature

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**STUDENT REFERRAL** Page 3 of 3

**(Complete when appropriate and return to school principal.)**

**Name:**__________________________________ **Date Rated:**____/____/____
Last First Middle

**School:**___________________ **Grade:**_______ **DOB:**____/____/____

**Teacher:**________________ **Census #**_________ **CA:**____/____

---

1. Briefly describe in specific terms the academic behavioral, health, and/or speech characteristics which you checked as problems on the first page of this form. (Describe signs of giftedness or outstanding talent if appropriate.)

2. Briefly describe the language and ethnicity of the child and home. Indicate whether multilingualism, cultural divergence, or suspected educational disadvantages are: 1) irrelevant, 2) explanatory, or 3) compounding factors as far as this student is concerned.

3. What do you think caused and/or maintains the student's problems?

4. What special attempts have the school and you made to remediate the student's problems or enrich his education?

5. Describe the student's current academic and behavioral functioning in the classroom - estimate grade equivalence, especially in basic skill areas. Attach samples of student's work and give recent test scores. Discuss strengths as well as weaknesses.

6. What specific questions would you like answered through the disgnostic evaluation?

____________________________
Teacher's Signature

---

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## BUREAU OF INDIAN AFFAIRS

### Student Screening Scale
### SENIOR AND JUNIOR HIGH LEVEL - SHORT FORM C

---

Child's Name: ____________________________ Date Rated: ____/____/____
Last First Middle

School: ______________________ SES # ________ Grade: ______ Sex: F M

Teacher - Rater: ______________ Subject(s) ____________ Date Enrolled: ____/____/____

Will you kindly review the records, current performance, and educational progress of this student and give consideration to the student as a candidate for placement in a special education program for exceptional children in light of Bureau of Indian Affairs standards for identification and placement. Complete this form and return it to your school principal no later than ____/____/____.

CHECK (✓) ANY OF THE CHARACTERISTICS BELOW WHICH APPLY TO THIS STUDENT

SCHOLASTIC UNDERACHIEVEMENT

- ☐ Abstract Problem Solving Poor
- ☐ Basic Knowledge Lacking
- ☐ Oral Participation in Class Unsatisfactory
- ☐ Comprehension of Class Activities Poor
- ☐ Spelling Skills Poor
- ☐ Written Assignments Unsatisfactory
- ☐ Reading Skills Poor
- ☐ Mathematics Skills Delayed
- ☐ Subject Matter Knowledge Weak ________
- ☐ Physical Education Skills Poor
- ☐ Slow, Disabled Learner

BEHAVIORAL PROBLEMS

- ☐ Withdrawn Seriously
- ☐ Aggressive Behaviors
- ☐ Emotional Immaturity/Liability
- ☐ Inattentive Behaviors
- ☐ Irresponsible Behaviors
- ☐ Classroom Discipline Problem
- ☐ Peer Relations Inadequate
- ☐ Self-Concept Poor
- ☐ Study Skills Inadequate
- ☐ Motivation Inadequate
- ☐ Attendance Poor

HEALTH IMPAIRMENTS

- ☐ Visual Problems Suspected
- ☐ Hearing Problems Suspected
- ☐ Crippling Condition ____________
- ☐ Dental Problems
- ☐ Specific Health Problem ________
- ☐ Physical Fitness Poor
- ☐ General Health Poor
- ☐ Personal Hygiene

BACKGROUND FACTORS

- ☐ History of Developmental Delay
- ☐ History of Behavioral Problems
- ☐ History of Academic Problems
- ☐ History of Environmental Disadvantage
- ☐ Cultural Divergence Compounds Problem
- ☐ Multilingualism Compounds Problem
- ☐ Cultural Divergence Explains Problem
- ☐ Multilingualism Explains Problem

SPEECH IMPAIRMENTS

- ☐ Articulation Difficulties
- ☐ Stuttering
- ☐ Other ____________________

GIFTEDNESS

- ☐ Intellectually Gifted
- ☐ Outstanding Talent ____________
- ☐ Scholastic Achievement Outstanding

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Based upon this review, check one of the four boxes and sign this form.

_____ Student may be gifted and/or exceptionally talented. I have completed and attached a referral form for the gifted and talented.

_____ Student is progressing adequately and there are no significant teacher observed signs of a handicapped condition.

_____ Student is progressing inadequately but there are no significant teacher observed signs of a handicapping condition. Educational disadvantage, language, lack of exposure, or other problems probably explain his difficulties. I recommend ____________________
________________________________________________________________________
________________________________________________________________________

_____ Student is progressing inadequately and/or there are some significant teacher observed signs of a handicapping condition. I have completed and attached a detailed rating scale and/or a referral form on this student. I recommend that this student be considered as a candidate for an educational evaluation to determine eligibility for special education.

________________________________________
Teacher's Signature

---

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## STUDENT REFERRAL

Page 3 of 3

(Complete when appropriate and return to school principal.)

Name:______________________________ Date Rated:____/____/______
Last First Middle

School:____________________ Grade:__________ DOB:____/____/______

Teacher:___________________ Census #__________ CA:_____/______

---

1. Briefly describe in specific terms the academic behavioral, health, and/or speech characteristics which you checked as problems on the first page of this form. (Describe signs of giftedness or outstanding talent if appropriate.)

2. Briefly describe the language and ethnicity of the child and home. Indicate whether multilingualism, cultural divergence, or suspected educational disadvantages are: 1) irrelevant, 2) explanatory, or 3) compounding factors as far as this student is concerned.

3. What do you think caused and/or maintains the student's problems?

4. What special attempts have the school and you made to remediate the student's problems or enrich his education?

5. Describe the student's current academic and behavioral functioning in the classroom - estimate grade equivalence, especially in basic skill areas. Attach samples of student's work and give recent test scores. Discuss strengths as well as weaknesses.

6. What specific questions would you like answered through the disgnostic evaluation?

______________________________
Teacher's Signature

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Special Education

## BUREAU OF INDIAN AFFAIRS

## NOTICE OF CHILD IDENTIFICATION

To: ______________________________ Date: __________

This notice is to inform you that ______________________ was
Student

referred on __________________, 19__, for an evaluation of possible learning problems. Before this school can conduct an evaluation, you as a parent, have the right to:

1. Receive written notice of the evaluation procedures, including reason(s) for it and tests to be used.
2. Have this written notice provided in your primary language, if necessary.
3. Provide written consent before any evaluation(s) are completed.
4. An independent educational evaluation at the school's expense under certain conditions, should you disagree with the school's evaluation.
5. Be informed that there will be no change made in your child's education placement without your consent.
6. Be informed of due process procedures which are available to you. See the accompanying notice for the rights of parents of handicapped children.

If you should have any question or other concerns, please contact me at: __________________________________________.

______________________________
Authorized School Official

Special Education

## BUREAU OF INDIAN AFFAIRS

## PARENT CONSENT - ASSESSMENT/EVALUATION and/or EXAMINATION

This is to Certify that I, ______________________________, hereby
Parent or Guardian (Typed)

give informed consent for my child, __________________________, to
Name (Typed)

be evaluated to determine whether or not my child is eligible for special services in order to receive an appropriate education. These evaluations will be done by persons who have special training to evaluate and identify student needs. I have also had the opportunity to review the "Statements to Parents" below and have any questions answered.

The types of assessments/evaluations and/or examinations to be used are as follows:

| TYPE | AGENCY/PRACTITIONER |
|---|---|
| | |
| | |
| | |
| | |
| | |

____ I CONSENT to have my child/ward individually evaluated.

Date ______________________ Signature of Parent or Guardian ______________________

____ I DO NOT CONSENT to have my child/ward individually evaluated.

Date ______________________ Signature of Parent or Guardian ______________________

### STATEMENTS TO PARENTS

1. You have the right to refuse permission for individual testing.
2. You have the right to request, receive and review all relevant records and be fully informed of the results of the evaluation.

## Statements to Parents (Continued)

3. There will be no change made in your child's education placement without your receiving prior notice of recommended change and giving your written approval of the recommendation.

4. Upon completion of your child's/ward's evaluation, this agency shall notify you in writing that your child has been evaluated and that there will be a meeting to review the results with you.

5. Should you refuse permission for evaluation, the school may request an impartial hearing to present its case for evaluation following due process procedures established by the Bureau of Indian Affairs.

6. You may also obtain an independent educational evaluation prior to the placement of your child/ward into a special education program. This may or may not be at your expense. See the accompanying Parent Rights and Responsibilities for more information.

---

Interpretation ____ Was or ____ Was Not Provided.

Witness: ______________________________ ____________________
Interpreter Date

I, the undersigned, have defined and fully explained the proposed assessment/evaluation and/or examination(s) and why they are necessary. I have also reviewed the procedural safeguards as stated below with the parent and/or guardian.

Signature: ______________________________ ____________________
Authorized School Official Date

---

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Special Education

BUREAU OF INDIAN AFFAIRS

STUDENT:______________________________ SES #:______________

## SPECIFIC LEARNING DISABILITY EVALUATION AND PLACEMENT FORM

Attachment to Parent Consent - Special Education Placement and Services
Required for Eligibility as Specific Learning Disabled

STATEMENT OF ELIGIBILITY:

The results of the most recent psychoeducational assessment indicates that ______________________________ has a specific learning disability in the area(s) of ______________________________. This determination is based on the severe discrepancy between ____ ________________________'s average or above average ability (      ) and his/her past and present educational achievement in the area(s) of ______________________ ______________________ ____________________________________________.

Observation of ____________________ in the regular classroom setting (Observer) and the observations noted on the psychological report indicate that these observed behaviors related to his/her academic functioning by ______________________________ ____________________________________________.

Since the assessment seems to indicate that the observed behaviors and the identified discrepancy may adversely affect his/her academic achievement unless he/she receives special education services and/or related services, it is recommended that ________________ receive special education services and/or related services in a ________________________ setting for ________ minutes or class periods ____________ times per week.

________ No adverse effects of environmental, cultural, or economic disadvantage were noted in the screening or assessment data.

________ The following adverse effects of environmental, cultural, or economic disadvantage were noted on the screening instrument and assessment data:______________________
______________________________________________
______________________________________________
______________________________________________

________ No medical information which is relevant to his/her education is noted.

________ The following medical information which is relevant to his/her education is noted:______________________
______________________________________________
______________________________________________
______________________________________________

**Comments:** ______________________

| **SIGNATURE:** | **POSITION:** | **DATE:** |
|---|---|---|
| | | |
| | | |
| | | |

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§ 121a.541 HANDICAPPED CHILDREN

(b)***

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. This term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

§ 121a.702 (Amended)

2. Section 121a.702 is ammended by deleting paragraph (a) (2).

3. The following new sections are added:

ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

§ 121a.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 121a.532, each public agency shall include on the multidisciplinary evaluation team: (a) (1) The child's regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and (b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

§ 121a.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if: (1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a) (2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and (2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

i) Oral expression;
ii) Listening comprehension;
iii) Written expression;
iv) Basic reading skill;
v) Reading comprehension;
vi) Mathematics calculation; or
vii) Mathematics reasoning.

BUREAU OF INDIAN AFFAIRS

---

To: ______________________ Date: ______________

Name of Student: ______________________ SES #: ______________

The assessment(s), examination(s), or evaluation(s) for which you gave your consent have been completed. The results indicate that:

( ) No placement in special education programs or services is recommended at this time.

or

( ) A planning meeting for the purpose of developing, reviewing, and/or revising an IEP (Individualized Education Program) for your child is recommended.

It is important that you participate in this meeting. We would like to schedule the meeting at a mutally agreed-upon time and place. We suggest the following schedule. If this is not agreeable to you, please let us know immediately so we can change the date, time or place.

Date: ______________________

Time: ______________________

Place: ______________________

Purpose: ______________________

Participants in Meeting:

1. A representative of the school: ______________
2. The child's teacher: ______________
3. One or both parents: ______________
4. The child, where appropriate: ______________
5. Evalaution personnel representative: ______________
6. Other individuals at the discretion of the parents or the school: ______________

Interpretation ( ) was not provided.
( ) was provided.

To be completed by interpreter when message is delivered to home:
( ) Parent agreed to schedule above.
( ) Parent wished to change schedule as indicated above.

WITNESSED: ______________________
Interpreter

______________________
Principal

# NOTICE TO PARENTS/GUARDIANS

The attached notice is being sent to you to explain all of the procedural safeguards available to you under the law. You are being notified, in writing, and are being given the opportunity to attend and participate in the meeting to be held to determine if your child needs special education and related services, and/or to develop an appropriate program in the least restrictive environment to meet your child's needs. If you do not attend this meeting, a copy of the individualized education program developed for your child will be sent to you. Prior to placement of your child in a special education program, your consent must be obtained.

# NAVAJO AREA SP L EDUCATION

2-79

DATE OF IEP ______________

## INDIVIDUAL EDUCATION PROGRAM

Annual Review Date ______________

Student: ______________ Grade: ______ D.O.B. ______________ C.A. ________ Address: ______________ I.D. No. ________

School: ______________ Teacher: ______________ Program Placement: ______________

| I. ANNUAL GOALS | II. PRESENT LEVEL OF EDUCATIONAL PERFORMANCE | III. PERIODIC OBJECTIVES | IV. STARTING DATE | V. ESTIMATED COMPLETION DATE | VI. PERSON RESPONSIBLE | VII. EVALUATION RESULTS (LIST OBJECTIVES COMPLETED BY TEACHER) |
|---|---|---|---|---|---|---|
| STEP NO. ________ | NUMBER: | NUMBERS: | | | | |
| STEP NO. ________ | NUMBER: | NUMBERS: | | | | |
| STEP NO. ________ | NUMBER: | NUMBERS: | | | | |
| 10.29 STEP NO. ________ | NUMBER: | NUMBERS: | | | | |
| STEP NO. ________ | NUMBER: | NUMBERS: | | | | |
| VIII. STEP NO. 8101 PLACEMENT IN LEAST RESTRICTIVE ENVIRONMENT | NUMBER: | NUMBERS: | | | | |

| IX. SPECIFIC EDUCATIONAL SERVICES | X. LOG OF PARENT CONTACT | XI. RELATED SERVICES |
|---|---|---|
| | | |

**XII. PARENT AUTHORIZATION**

I consent to the Placement and the program as contained in the IEP

☐ do consent to the Program

☐ do not consent to the Program

Parent Signature ______________ Date ________

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Interpreter ______________ Date ________

**XIII. ENDORSEMENTS**

| | | | |
|---|---|---|---|
| Name | Title | Name | Title |
| Name | Title | Name | Title |
| Name | Title | Name | Title |

**DISTRIBUTION**

White: Cum Folder

Canary: Teacher

Pink: Agency

Gold: Parent

Page 1 of 1

Page 1 of 2
Special Education

BUREAU OF INDIAN AFFAIRS

## PARENT CONSENT - SPECIAL EDUCATION PLACEMENT AND SERVICES

EDUCATIONAL APPRAISAL AND REVIEW COMMITTEE:
The following persons have been consulted regarding placement of ______________________________ (Name of Student) in a special education program. We agree that the student should be placed in a special education program for ____________________________ (type of handicap).

Note: If the placement is because the student is eligible for special education as a Specific Learning Disabled, the Specific Learning Disability Evaluation and Placement form must be attached.

| Name | Position | Signature | Date |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

### PARENTAL CONSENT

This is to Certify that I, ______________________________, hereby
Parent or Guardian (Typed)
agree to have my child/ward, ______________________________, placed
Name (Typed)
in ________________________ operated by ___________________________
Program/Service Agency/School/Other Location
for a period not to exceed three (3) years from the date of execution of this consent. I understand at the end of that period my child/ward will be reevaluated and that I will be given the recommendations for placement and further consent. I also understand that this placement will be reviewed at least annually. I have been informed of the placement options and agree that the placement decision conforms with the least restrictive environment requirements. I also understand that the procedural safeguards listed on the attached form are available to me in the event that I disagree with the placement of my child/ward.

____ I AGREE to the placement in the Special Education Program as described above.

______________ ______________________________
Date Signature of Parent/Guardian

____ I DO NOT AGREE to the placement in the Special Education Program described above.

______________ ______________________________
Date Signature of Parent/Guardian

Interpretation _____ was OR _____ was not provided.

Witnessed:________________________________________ _______________
Interpreter Date

I, the undersigned, have defined and fully explained the recommended placement of the above named student and the parent or guardian as witnessed above, consents to the placement of their child/ward in the program service(s) stated. I have also reviewed the attached Parent Rights and Responsibilities procedural safeguards with the parent or guardian.

BUREAU OF INDIAN AFFAIRS

## REQUEST FOR DUE PROCESS HEARING REGARDING SPECIAL EDUCATION SERVICES

---

Dated this ________ Day, of ____________________, 19________.

From: ________________________ For: ________________________
Name Student's Name

________________________ ________________________
Address Telephone

To: ________________________________________________________

________________________________________________________

A Due Process Hearing is requested by _________________________

in regard to ______________________________. The purpose of this
Name of Student

Hearing will be to determine appropriate: identification, evaluation, educational placement of the child or the provision of a free appropriate public education of the child.

Specifically, the issue of the Hearing is: ______________________

____________________________________________________________

____________________________________________________________

____________________________________________________________

The statute, rule or regulation involved: ______________________

____________________________________________________________

____________________________________________________________

The Petitioner requests the following outcome(s) of the Hearing: __

____________________________________________________________

____________________________________________________________

____________________________________________________________

____________________________________________________________

# NOTICE TO PARENTS

PARENTS HAVE THE FOLLOWING RIGHTS RELATED TO AN IMPARTIAL DUE PROCESS HEARING:

1. Be represented by legal counsel, at parents' expense.
2. Be accompanied to the hearing by individuals with special knowledge or training in problems of the handicapped, at parents' expense.
3. Present evidence and confront, cross-examine and compel the attendance of witnesses.
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) days before the hearing.
5. Have a record of the hearing.
6. Obtain written findings of fact and a written decision from the hearing officer within 45 days of this request for a hearing.
7. Appeal the decision of the hearing officer to ____________ ______________.
8. Appeal the decision of the ______________________________ ____________ to the Court of proper jurisdiction.
9. Have the child who is the subject of the hearing remain in his/her educational placement during the pendency of the due process procedure unless the parents and the school agree otherwise.
10. Examine all education records of the child who is the subject of this hearing.
11. Request that the hearing be open to the public.
12. Obtain an independent evaluation that may be admitted into evidence, at parents' expense, unless that is the issue of this hearing.
13. Determine if the child, who is the subject of this hearing, be present at the hearing.
14. Review and be informed of the procedures to be followed in the hearing. A copy will be made available upon request.

See attached copy of PARENT RIGHTS AND RESPONSIBILITIES for complete information.

The signature of the parent(s) indicates:

1. The hearing officer shall have access to all student records of the named student for purposes of the hearing only.

2. The Notice on the reverse side of Page One has been reviewed and opportunities have been provided to clarify any questions or concerns.

3. A list of free or low cost legal and other relevant services has been provided to the parent.

4. This request for a Due Process Hearing may be revoked upon written request of the Petitioner and Respondent.

| | |
|---|---|
| Parent's Signature | Authorized School Official |

Parent's Signature

BUREAU OF INDIAN AFFAIRS

## APPEAL FROM DECISION OF HEARING OFFICER REGARDING SPECIAL EDUCATION SERVICES

Dated: ____________________

From: ____________________ ____________________
Name Student's Name

____________________ ____________________
Address Telephone

To: ________________________________________

________________________________________

The petitioner requests an administrative review of the decision of the hearing officer to the ______________________________.
The petitioner requests a review of the following specific portions of the findings of fact and/or recommendations of the hearing officer:

________________________________________

________________________________________

________________________________________

The petitioner requests the following relief.

________________________________________

________________________________________

________________________________________

The signature of the Parent(s) indicates:

1. The procedural safeguards from PL 94-142 have been reviewed and opportunities have been provided to clarify any questions or concerns.

2. A list of free or low cost legal and other relevant services has been provided.

3. This request for administrative review by the ______________ ______________ may be revoked upon written request of the petitioner and respondent.

____________________ ____________________
Parents Signature Authorized School Official Signature

# CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

P.L. 94-412 - 121a.221

"Establish policies and procedures in accordance with detailed criteria prescribed under Section 617 (c)."

A. Policy of LEA in regard to confidentiality of personally identifiable information.

The following policies and procedures have been established by ______________________________ in accordance with the detailed criteria prescribed under Section 617 (c):

1. An annual notification to parents of students and/or eligible students in attendance at ______________________________ will be published or otherwise disseminated to inform them:

2. That parents and eligible students have the right to have:

   - access to education records without unnecessary delay (no longer that 45 calendar days) and without Record of Access;

   - an explanation and interpretation of the records;

   - a copy of the education records if not in violation of stated school policy (circumstances in which the agency feels it has a legitimate cause to deny a request for such copies will be stated in this Annual Notice); and

   - the authority to inspect and review records relating to his/her child unless the agency has been advised in writing otherwise.

3. That authorized employees of the participating agency listed on the official ACCESS LIST may review information in the performance of official duties WITHOUT a record of access.

4. That information may be released for review or inspection WITH a Record of Access including:

   a) name of party,
   b) the date access was given,
   c) purpose of which the party is authorized to use the records

To: 1) Officials of another school in which the student seeks enrollment.

2) Representatives who IDENTIFY themselves of the Comptroller General of the United States.

3) The Secretary of Health, Education and Welfare (all of his employees that represent him).

4) The Commissioner of Education (US), the Director of the National Institute of Education, or the Assistant Secretary for Education.

5) The state educational authorities (the Bureau of Indian Affairs, in this case).

6) Proper personnel in connection with financial aid for which the student has applied.

7) Organizations or agencies for the purpose of developing, validating, or administering tests provided all procedural safeguards are followed to insure maintenance of confidentiality.

8) Comply with a judicial order or lawfully issued subpoena PROVIDED that ________________________________ makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance.

9) Appropriate health/safety/emergency personnel if knowledge of the information is necessary to protect the health or safety of the student or other individuals PROVIDED that the following conditions are relevant:

   a) The seriousness of the threat to the health or safety of the student or other individuals.

   b) The need for the information to meet the emergency.

   c) Whether the parties to whom the information is disclosed are in a position to deal with the emergency AND

   d) The extent to which time is of the essence in dealing with the emergency.

B. Person responsible for assurance of confidentiality.

It is the policy of ______________________________ NOT to release personally identifiable information except as specifically outlined above. ______________________________ has/have been designated as the persons responsible for assurance of confidentiality.

The following types and locations of educational records are maintained by the ______________________________ and the officials responsible for these records are:

NAME:______________________ Title:______________________

Address:______________ ______________________________

| TYPES | LOCATIONS |
|---|---|
| | |
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The area in which student records are maintained or regularly used will be posted with an appropriate warning statement that access to the records is limited to authorized personnel. During working hours, the area in which the student records are maintained or regularly used will be occupied by authorized personnel.

______________________________ has adopted the policy of charging NO fees for search, retrieval, or copies of records made for parents under this part.

A parent who believes that information in education records collected, maintained or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request that the records be amended. ______________________ will decide whether to amend the information in accordance with the request within 45 calendar days of time of receipt of request or to refuse to amend the information in accordance with the request and inform the parent of the refusal and advise the parent of the right to a hearing under Section 121a.568.

______________________________ will, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, ______________________________ decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, ______________________________ will amend the records and inform the parent in writing.

If, as a result of the hearing, ______________________________ decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, ______________________________ will inform the parent of the right to place in the records it maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decisions of the agency.

Any explanation placed in the records of the child under this section will be maintained by ______________________________ as part of the records of the child as long as the record or contested portion is maintained by ______________________________ and if the records of the child or the contested is disclosed by ______________________________ to any party, the explanation will also be disclosed to the party.

That a hearing held under Section 121a.568 will be conducted according to the following procedures outlined under Section 99.22 of this title (FERPA P.L. 93-568).

The hearing will be held within a reasonable period of time (45 calendar days) after ______________________________ has received the request and the parent of the student or the eligible student will be given notice of the date, place and time reasonably (10 calendar days) in advance of the hearing.

The hearing will be conducted by an official designated by the appropriate Bureau of Indian Affairs who does not have a direct interest in the outcome of the hearing.

The parent of the student or the eligible student will be afforded a full and fair opportunity to present evidence relevant to the issue raised under Section 99.21 and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.

The hearing officer will make his decision in writing within a reasonable period of time (10 calendar days) after the conclusion of the hearing.

The decision of the hearing officer will be based solely upon the evidence presented at the hearing and will include a summary of the evidence and the reasons for the decisions.

The parent or guardian and local school will be notified orally and in writing with written receipt of notification of the name of the hearing officer and the time, place and date of the hearings. The agency must do this within 45 days of notification of the name of the hearing officer. The hearing will not be held sooner than twenty (20) days from the date of receipt of the notification. This twenty-day period may be waived by the mutual agreement of both parties.

The notice shall include the reasons for the hearing.

The notice will advise the parent, guardian, local school that they have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children.

The Bureau of Indian Affairs will pay the cost of the hearing, including the expenses of the hearing officer. The Bureau of Indian Affairs will not pay for counsel for the parents, but it shall inform the parents of any free or low cost legal, educational, medical, or social services available in the area.

Parental consent will be obtained before personally identifiable information is:

1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

2) Used for any purpose other than meeting a requirement of this part.

If so stated in the Annual Notice, parental consent WILL NOT be obtained before directory information is released or before records are sent to an agency into which the student transfers or seeks admittance for education services, unless the parent indicates that such release of information shall not occur.

________________________________ will not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of the Family Education Rights and Privacy Act.

The Bureau of Indian Affairs will include policies and procedures, which ________________________________ will follow, in its annual program plan which will be used in the event that a parent refuses to provide consent under this section.

________________________________ will protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

C. ________________________________ assures that records will be kept on persons who have obtained access to confidential records other than parents and authorized employees of the participating Area. This will include:

1. Access date.
2. Name of party.
3. Type of ID presented.
4. Purpose for which party is authorized to use the records.
5. Student records accessed.
6. Date and signature of employee verifying ID.

The principal has been designated as the official responsible for insuring the confidentiality of any personally identifiable information at ______________________________________.

All persons collecting or using personally identifiable information will receive training and instruction regarding the BIA's policies and procedures under Section 121a.129 Subpart B and Part 99 of FERPA. This training will be provided by the Bureau of Indian Affairs.

______________________________________ will maintain, for public inspection, a current listing of the names and positions of those employees within the ______________________________________ who may have access to personally identifiable information.

When personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child, the parents have the right to request the destruction of information and the information will be destroyed IF a written request is submitted to the school by the parents. However, a permanent record of the student's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. In the event that a parent does request the destruction of information, the Confidentiality Officer will remind the parents that the records may be needed by the child or the parents for social security benefits or other purposes.

________________________________ will follow the BIA policies and procedures set forth in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and the type or severity of disability. Under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.4 (a)), the rights of parents regarding education records are transferred to the student at age 18. This is stated in the ______________________ and the ______________________________ at ______________________ to inform students and personnel.

# WARNING!

ACCESS TO VAULT AND RECORDS LIMITED TO AUTHORIZED PERSONNEL ONLY. REFER TO OFFICIAL ACCESS LIST.

EMPLOYEES ARE SUBJECT TO A CRIMINAL PENALTY FOR THE UNAUTHORIZED DISCLOSURE OF STUDENT RECORDS.

SUMMARY OF SECTION 36.23 CONDUCT OF EMPLOYEES

A) EMPLOYEES SHALL PROTECT THE INTEGRITY, SECURITY, AND CONFIDENTIALITY OF STUDENT RECORDS.

B) EMPLOYEES SHALL NOT DISCLOSE STUDENT RECORDS TO ANYONE OTHER THAN THE PARENT OF THE STUDENT OR THE ELIGIBLE STUDENT UNLESS DISCLOSURE IS PERMITTED UNDER SECTION 36.14.

C) EMPLOYEES SHALL NOT ALTER OR DESTROY A STUDENT RECORD EXCEPT IN THE SPECIFIC CIRCUMSTANCES SPECIFIED IN SECTION 36.23 (C)(1)(2).

D) EMPLOYEES HAVE BEEN MADE AWARE OF THESE REQUIREMENTS THROUGH SUPERVISORY CHANNELS AND POSTING OF REGULATIONS ON THE OFFICIAL SCHOOL BULLETIN BOARDS.

BUREAU OF INDIAN AFFAIRS

RECORD OF ACCESS

STUDENT'S NAME:_________________________ S.E.S. No.:_______________

| Access Date | Party Accessing Records | Type of I.D. Presented | Purpose of Access | Date & Signature of Employee Verifying I.D. |
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# BUREAU OF INDIAN AFFAIRS

# TRANSFER OF RECORD(S) FORM

REQUESTOR: Name: ____________________

Address: ____________________

REQUESTED FROM: Name: ____________________

Address: ____________________

Student: Name: ____________________ S.E.S. No.: __________

Parent/Guardian: ____________________

---

Purpose: ____ Routine Transfer

____ Evaluation

____ Due Process

____ Other (Specify) ____________________

---

This is to certify that I do hereby agree to the release of educational records (defined as any information used to make a decision regarding special education for my child) with the understanding that they will be released only for the purpose stated above and only to the person/institution stated above.

__________ Date

____________________ Parent, Guardian or Eligible Student

---

The undersigned releases these records with the understanding that they are being released only for the purpose stated above and only to the person/institution stated above.

__________ Date

____________________ Authorized School Official

# 11. OTHER RESOURCES

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6
UNITED STATES GOVERNMENT

# *Memorandum*

**TO** : Agency Education Program Administrator
Education Specialist (Special Education)

**DATE:** JUN 16 1980

**FROM** : Area Education Programs Administrator

**SUBJECT:** Tentative Approval of Private Special Education Schools
1980-81 School Year

As indicated the current tentative listing for private special education schools for the 1980-81 school year by the Arizona Department of Education. Please keep this information for future use in any placement of students in an off-reservation facility.

Rebecca H Morgan

Attachments

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

CAROLYN WARNER
SUPERINTENDENT

Arizona
Department of Education
1535 WEST JEFFERSON
PHOENIX, ARIZONA 85007
255-4361

May 21, 1980

## MEMORANDUM

**TO:** Private Special Education School Administrators

**FROM:** BR Bob Rhoton, Program Specialist
Special Education

**SUBJECT:** Tentative Approval of Private Special Education Schools, 1980-81 School Year

Enclosed is a list of tentatively approved private special education schools for the 1980-81 school year. The categories of exceptionality for which each school is seeking approval are indicated.

Tentative approval indicates those private schools in the process of applying for approval to contract with public school districts for the provision of special education services during the 1980-81 school year. Public school districts may notify private facilities of their intent to contract, but the signed contracts cannot be processed by the Department of Education until after final approval is granted. The final roster of officially approved private schools will be forwarded to you prior to September 1, 1980. After that date, copies of approved contracts will be mailed to both parties.

If there are any corrections or additions to the listing for your school, please indicate below and return the lower portion of this memo to my office. This will ensure that the final approval list will be as accurate as possible. Thank you for your assistance.

MAK/bls/D6/5.07

Enclosure

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School Name ______________________________ Phone ______________

Address ____________________________________________________

Administrator/Title __________________________________________

11.2

Return to:
Mr. Bob Rhoton
Arizona Department of Education
Special Education
1535 West Jefferson
Phoenix, AZ 85007

CAROLYN WARNER
SUPERINTENDENT

Arizona
Department of Education
1535 WEST JEFFERSON
PHOENIX, ARIZONA 85007
255-4361

May 21, 1980

# MEMORANDUM

TO: Department of Economic Service Program Managers,
Juvenile Court Chief Probation Officers,
Department of Corrections

FROM: BR Bob Rhoton
Program Specialist
Special Education

SUBJECT: Tentatively Approved Private Special Education Schools,
1980-81 School Year

Enclosed is a list of tentatively approved private special education schools for the 1980-81 school year. Those licensed by the Department of Economic Security as Residential Care Facilities and tentatively approved by the Department of Education as Permanent Voucher Facilities are indicated by an asterisk (*). Shown on the list are the areas of exceptionality for which each private school is seeking approval.

It is anticipated that these schools will meet final approval requirements and that Voucher students tentatively approved during the summer will be eligible for funding during the 1980-81 school year. A list of officially approved private schools will be disseminated prior to September 1, 1980.

If you have any questions, please feel free to contact me at 255-3183 or toll free at 1-800-352-4558.

BR/bls/D6/5.07

Enclosure

Arizona Department of Education
Special Education

## Tentatively Approved Private Special Education Schools
1980-81 School Year

| School | Areas of Exceptionality |
|---|---|
| *Licensed by the Department of Economic Security as a Residential Care Facility | |
| Apache County | |
| St. Michaels Association for Special Education, Inc.<br>P.O. Box 121<br>St. Michaels, Arizona 86511<br>Sister Marijane Ryan, Director<br>Phone: 871-4871 | Trainable Mentally Handicapped<br>Educable Mentally Handicapped<br>Seriously Emotionally Handicapped |
| Coconino County | |
| *Hozhoni Foundation for the Handicapped, Inc.<br>P.O. Box 1801 (mailing)<br>324 West Aspen Avenue<br>Flagstaff, Arizona 86001<br>Mr. Larry Loucks, Executive Director<br>Phone: 779-4158 | Trainable Mentally Handicapped |
| Maricopa County | |
| *ABC's Co-Ed School<br>P.O. Box 27128 (mailing)<br>3115 West Missouri Avenue<br>Phoenix, Arizona 85017<br>Dr. Phyllis McFarland, Director<br>Phone: 973-8131 | Seriously Emotionally Handicapped |
| *Arizona Boys Community<br>4202 East Union Hills Drive<br>Phoenix, Arizona 85024<br>Mr. Robert McCallie, Director of Treatment<br>Phone: 992-2941 | Seriously Emotionally Handicapped |
| *Arizona Boys Ranch<br>Boys Ranch, Arizona 85224<br>Mr. David Boyer, Education Coordinator<br>Phone: 892-9550 | Learning Disabled<br>Seriously Emotionally Handicapped |

| School | Areas of Exceptionality |
|---|---|
| Maricopa County (continued) | |
| Arizona Training and Evaluation Center (AZTEC)<br>2205 East University Drive<br>Phoenix, Arizona 85034<br>Mr. Vince Scott, Executive Director<br>Phone: 244-1855 | Trainable Mentally Handicapped |
| Brighton School<br>P.O. Box 32104 (mailing)<br>4118 North 41st Place<br>Phoenix, Arizona 85064<br>Dr. Carolyn Cabanski, Director<br>Phone: 957-7930 | Seriously Emotionally Handicapped |
| *Devereux Day School and Clinic<br>6404 East Sweetwater Avenue<br>Scottsdale, Arizona 85254<br>Mr. Richard A. Etter, Branch Administrator<br>Dr. Elizabeth Eden, Director<br>Phone: 948-1950 | Learning Disabled<br>Seriously Emotionally Handicapped<br>Multiple Handicapped (Autistic) |
| Foundation for Blind Children's Cooperative School<br>1201 North 85th Place<br>Scottsdale, Arizona 85257 (mailing)<br>6124 North 12th Street<br>Phoenix, Arizona 85014<br>Mrs. Margaret Bluhm, Executive Director<br>Phone: 947-3744 | Multiple Handicapped (Blind/Deaf) |
| Garden Park Enterprises<br>1142 West Hatcher Road<br>Phoenix, Arizona 85021<br>Mr. Donald Peterson, Executive Director<br>Phone: 944-4641 | Trainable Mentally Handicapped |
| *Garfield Girls' School<br>P.O. Box 5216 (mailing)<br>1022 East Garfield<br>Phoenix, Arizona 85010<br>Mrs. Regene Schroeder, Executive Director<br>Mr. James Salay, Education Supervisor<br>Phone: 271-9116 | Homebound<br>Seriously Emotionally Handicapped |

| School | Areas of Exceptionality |
|---|---|
| Maricopa County (continued) | |
| Gompers Rehabilitation Center<br>7211 North Seventh Street<br>Phoenix, Arizona 85020<br>Mrs. Monica Baird, Director<br>Ms. Sandra Landy, Educational Director<br>Phone: 943-3484 | Trainable Mentally Handicapped<br>Physically Handicapped<br>Hearing Impaired<br>Educable Mentally Handicapped<br>Multiple Handicapped (Autistic, EMH/PH, TMH/PH, EMH/EH) |
| Good Samaritan School for Learning Disabilities<br>P.O. Box 2989 (mailing)<br>1021 East Willetta<br>Phoenix, Arizona 85006<br>Ms. Shelia Howard, Supervisor<br>Phone: 257-4225 | Learning Disabled |
| *Helaman House<br>Route 1, Box 181<br>Higley, Arizona 85236<br>Mr. Michael Hughes, Executive Director<br>Phone: 832-5415 | Seriously Emotionally Handicapped |
| *Jane Wayland Child Guidance Center<br>1937 West Adams Street<br>Phoenix, Arizona 85009<br>Ms. Mary Lu Burgess, Chief of Special Education<br>Mr. Richard Geasland, Program Director<br>Phone: 254-6642 | Learning Disabled<br>Seriously Emotionally Handicapped |
| LATCH School, Inc.<br>8145 North 27th Avenue<br>Phoenix, Arizona 85021<br>Ms. Sandra Landy, Executive Director<br>Phone: 996-8485 | Trainable Mentally Handicapped<br>Educable Mentally Handicapped<br>Physically Handicapped<br>Seriously Emotionally Handicapped<br>Multiple Handicapped (Autistic, EMH/EH, EMH/PH, TMH/PH) |
| Lucky 13 Education Center<br>8820 East Cactus Road<br>Scottsdale, Arizona 85254<br>Mr. John Hoopingarner, Administrator<br>Ms. Wanda Sisnroy, Administrative Aide<br>Phone: 948-2390 | Seriously Emotionally Handicapped |

| School | Areas of Exceptionality |
|---|---|
| Maricopa County (continued) | |
| MARC Center<br>924 Country Club Drive<br>Mesa, Arizona 85201<br>Ms. Karen Cheperka, Vocational Program Manager<br>Mr. Randy Gray, Executive Director<br>Phone: 969-3800 | Trainable Mentally Handicapped<br>Seriously Emotionally Handicapped<br>Multiple Handicapped (TMH/PH) |
| *The New Foundation<br>P.O. Box 8500 (mailing)<br>6401 South Eighth Place<br>Phoenix, Arizona 85066<br>Mr. Michael Todd, Executive Director<br>Phone: 268-3421 | Seriously Emotionally Handicapped |
| New Way School<br>P.O. Box 1481 (mailing)<br>4140 Miller Road<br>Scottsdale, Arizona 85252<br>Mrs. Evelyn Filler, Education Director<br>Phone: 946-9112 | Learning Disabled |
| Northwest Enterprises<br>5202 West Missouri<br>Glendale, Arizona 85301<br>Mrs. Daryl Roper, Administrator<br>Phone: 939-8391 | Trainable Mentally Handicapped |
| *Patterdell School<br>1820 West Northern Avenue<br>Phoenix, Arizona 85021<br>Sister M. Augustine, Principal<br>Phone: 944-3385 | Learning Disabled<br>Seriously Emotionally Handicapped |
| Perry Rehabilitation Center<br>3146 East Windsor<br>Phoenix, Arizona 85008<br>Mr. Brian Montgomery, Administrator<br>Phone: 956-0400 | Trainable Mentally Handicapped |

| School | Areas of Exceptionality |
|---|---|
| Maricopa County (continued) | |
| *PREHAB of Mesa, Inc.<br>P.O. Drawer G (mailing)<br>Mesa, Arizona 85201<br>Ms. Jane Cassidy, Director of Educational Services<br>Phone: 969-8961, 969-4024 | |
| Homestead (1131 East University) | Seriously Emotionally Handicapped |
| Day School (1134 East University) | Seriously Emotionally Handicapped |
| Mitchell Residence (3505 East University) | Seriously Emotionally Handicapped |
| *San Pablo Residential Treatment School<br>4001 North 30th Street<br>Phoenix, Arizona 85016<br>Mr. John Morgan, Director of Education<br>Phone: 956-9090 | Seriously Emotionally Handicapped |
| Scottsdale Foundation for the Handicapped<br>7507 East Osborn Road<br>Scottsdale, Arizona 85251<br>Mr. Donald W. England, Executive Director<br>Phone: 994-5704 | Trainable Mentally Handicapped |
| *Sunny Dale School<br>P.O. Box 28398 (mailing)<br>Tempe, Arizona 85282<br>1625 West Dobbins Road, Phoenix<br>Mr. Gerald Templin, Executive Director<br>Phone: 966-0582 | Learning Disabled<br>Seriously Emotionally Handicapped |
| Tempe Center for the Handicapped<br>1724 South Ventura<br>Tempe, Arizona 85281<br>Ms. Nancy Gretzinger, Director<br>Phone: 966-6287 | Trainable Mentally Handicapped<br>Physically Handicapped |
| Upward Foundation's Arizona Preschool<br>6306 North Seventh Street<br>Phoenix, Arizona 85014<br>Mr. Warren France, Education Director<br>Phone: 279-5801 | Trainable Mentally Handicapped<br>Educable Mentally Handicapped |

| School | Areas of Exceptionality |
|---|---|
| Maricopa County (continued) | |
| *Valley of the Sun School<br>3115 West McDowell Road<br>Phoenix, Arizona 85009<br>Mr. Joe Cox, Executive Director<br>Phone: 278-5551 | Trainable Mentally Handicapped<br>Educable Mentally Handicapped |
| *Youth Evaluation and Treatment Center<br>(E.T.C.)/Skills Center<br>66 West Culver Street<br>Phoenix, Arizona 85004<br>Ms. Goldie Kraft, Skills Center Coordinator<br>Phone: 257-1722 or 257-1723 | Seriously Emotionally Handicapped |
| Mohave County | |
| Little Red Schoolhouse<br>2090 Airway<br>Kingman, Arizona 86401<br>Dr. Len Upchurch, Director<br>Phone: 757-4330 | Trainable Mentally Handicapped |
| Navajo County | |
| Hopi Center for Human Services<br>P.O. Box 98<br>Second Mesa, Arizona 86043<br>Mr. Bob Wittsell, Director<br>Phone: 738-5506 | Trainable Mentally Handicapped |
| Pima County | |
| *Arizona Children's Home Association<br>P.O. Box 7277 (mailing)<br>2700 South Eighth Avenue<br>Tucson, Arizona 85725<br>Mr. William Elrey, Executive Director<br>Dr. Janice Gracey, Educational Coordinator<br>Phone: 622-3454 | Seriously Emotionally Handicapped<br>Learning Disabled |

| School | Areas of Exceptionality |
|---|---|
| Pima County (continued) | |
| Beacon Foundation for the Mentally Retarded, Inc.<br>25 East Drachman Street<br>Tucson, Arizona 85705<br>Ms. Barbara Altman, Executive Director<br>Phone: 623-3454 | Trainable Mentally Handicapped |
| *Creative Learning Systems, Inc.<br>P.O. Box 12121 (mailing)<br>5401 North Bowes Road<br>Tucson, Arizona 85732<br>Phone: 749-3623 | Seriously Emotionally Handicapped |
| *Desert Willow Ranch<br>10755 East Tanque Verde Road<br>Tucson, Arizona 85715<br>Mr. Fletcher McCusker, Executive Director<br>Phone: 749-9711 | Seriously Emotionally Handicapped |
| *Jay McCaffery School<br>7887 North La Cholla Boulevard<br>Tucson, Arizona 85704<br>Mr. Guy Heidinger, Executive Director<br>Ms. Kathy Gordon, Director of Academics<br>Phone: 297-2215 | Learning Disabled<br>Seriously Emotionally Handicapped |
| Papago Special Learning Program<br>P.O. Box 815<br>Sells, Arizona 85634<br>Mr. Kenneth Williams, Administrator<br>Phone: 383-2341 | Trainable Mentally Handicapped |
| *VisionQuest Learning Center<br>P.O. Box 12906 (mailing)<br>1613 North Swan<br>Tucson, Arizona 85732<br>Mr. David Simpson, Executive Director<br>Phone: 327-6064 | |
| 1613 North Swan, Tucson | Seriously Emotionally Handicapped |
| 26 Sowle Avenue, Bisbee | Seriously Emotionally Handicapped |

| School | Area of Exceptionality |
|---|---|
| Santa Cruz County | |
| Santa Cruz County Training School<br>P.O. Box 638 (mailing)<br>210 La Castellana Drive<br>Nogales, Arizona 85621<br>Dr. Robert Rapp, Director<br>Phone: 287-2043 | Trainable Mentally Handicapped |
| Yavapai County | |
| Bob Kuhne Opportunity Center<br>P.O. Box 1868 (mailing)<br>710 Whipple<br>Prescott, Arizona 86301<br>Dr. R. A. Parry, Director<br>Phone: 778-1840 | Trainable Mentally Handicapped |
| *Quixote Community School<br>748 Copper Basin Road (mailing)<br>Prescott, Arizona 86301<br>Dr. Dick Fine, Executive Director<br>Phone: 778-0044 | Seriously Emotionally Handicapped |
| Verde Valley Developmental Learning Center<br>P.O. Box 1061 (mailing)<br>361 South Willard<br>Cottonwood, Arizona 86326<br>Mrs. Penny Young, Director<br>Phone: 634-2049 | Trainable Mentally Handicapped |
| Yuma County | |
| Rainbow Center for Exceptional Children<br>1098 South Fifth Avenue<br>Yuma, Arizona 85364<br>Ms. Kathleen Baldwin, Director<br>Phone: 782-7586 | Trainable Mentally Handicapped |

# 12. MISCELLANEOUS

# APPENDIX A. GUIDELINES FOR REVIEWING ASSESSMENT PROCEDURES

## GUIDELINES FOR REVIEWING ASSESSMENT PROCEDURES
## AND PSYCHOEDUCATIONAL REPORTS

### I. Review raw data.

| | Yes | No | N/A |
|---|---|---|---|
| A. Test Protocols - Are test materials included with the report?<br>Comments: | | | |
| B. Referral:<br>1. Is there information as to what the teachers felt was the problem?<br>2. Guidance staff?<br>3. Parents?<br>Comments: | | | |
| C. Background - Is there information from the past that is relevant for the presenting problem(s)?<br>Comments: | | | |
| D. Vision and hearing screening - Has vision and hearing acuity screening been completed?<br>Comments: | | | |
| E. Intelligence - Were appropriate tests used? (Note: Review for significant signs of capacity.)<br>Comments: | | | |
| F. Achievement - Were appropriate tests used? (Note: Review for significant deficiencies.)<br>Comments: | | | |

|  | Yes | No | N/A |
|---|---|---|---|
| G. Perceptual/Psychomotor: |  |  |  |
| 1. Is data gathered on visual functioning? |  |  |  |
| 2. Auditory functioning? |  |  |  |
| 3. Psychomotor functioning? |  |  |  |
| Comments: |  |  |  |
| H. Socio-emotional: |  |  |  |
| 1. Is psychometric data gathered to clarify personal/social and behavioral adjustment? |  |  |  |
| 2. Behavioral data? |  |  |  |
| Comments: |  |  |  |
| I. General Impression: |  |  |  |
| 1. Do the data present one consistent picture? |  |  |  |
| 2. Do they give information about the referring problem? |  |  |  |
| Comments: |  |  |  |
| II. Review psychoeducation reports. |  |  |  |
| A. Consider general writing style: |  |  |  |
| 1. Is the report written so that teacher can understand the information? |  |  |  |
| 2. Look for Red Flag items; could a parent and teacher read the report without becoming angry at the evaluator or school? (Note: Examples of Red Flag items:<br>brain damage<br>neurological dysfunction<br>other terms which might be interpreted to mean brain damage<br>"defective"<br>"inappropriate parenting:<br>the school "should"<br>marital conflict) |  |  |  |
| Comments: |  |  |  |

| | Yes | No | N/A |
|---|---|---|---|
| **B. Review diagnosis:** | | | |
| 1. Is the diagnostic statement clear? | | | |
| a. Is it phrased in the state classification terms followed by any necessary modifications? | | | |
| b. Are the conditions backed up with reference to data? | | | |
| c. Is there evidence that the conditions adversely affect educational performance? | | | |
| 2. If the student is diagnosed as mentally retarded or equivalent, does the report: | | | |
| a. Rule out cultural, linguistic, environmental or severe emotional factors as the primary cause of the handicap? | | | |
| b. Examine adaptive behavior in nonacademic settings? | | | |
| c. Document intellectual functioning when a and b above have been controlled? | | | |
| 3. If the student is diagnosed specific learning disability or equivalent: | | | |
| a. Is he/she of average potential in intellectual functioning? | | | |
| b. Is he/she significantly delayed academically? | | | |
| c. Have visual, hearing, motor handicap, mental retardation, emotional disturbance or environmental, cultural or economic disadvantage been ruled out as primary causes of handicapping conditions? | | | |
| d. Does the report back up these conditions with reference to data? | | | |
| 4. If the student is diagnosed as seriously emotionally disturbed or an equivalent, does the report: | | | |
| a. Specify the factors which suggest emotional disturbance? | | | |
| b. Describe the evidence which suggests the youngster cannot be adequately or safely educated without provision of special education? | | | |
| c. Differentiate between chronic and temporary distress? | | | |
| d. Rule out intellectual, sensory, and health factors as cause of dysfunction? | | | |

| | Yes | No | N/A |
|---|---|---|---|
| 5. For other handicapping conditions including; deaf, deaf blind, hard of hearing, multi-handicapped, orthopedically or other health impaired, speech impaired or visually handicapped, does the report: | | | |
| a. Include referral to appropriate professionals for further diagnosis? | | | |
| b. Include assessment information from one of these specialized areas? | | | |
| 6. If the student's problem is primarily cultural/linguistic or environmental, does the report: | | | |
| a. Consider the possibility of handicapping condition in addition to the cultural/linguistic environmental factors? | | | |
| 7. If no handicapping condition is found, does the report: | | | |
| a. Account for the referral problem in a way that makes sense? | | | |
| b. Handle inconsistencies between teacher and examiner observations? | | | |
| c. Indicate if the problem(s) are related to educational disadvantages, language background or socio-cultural background? | | | |
| Comments: | | | |
| C. Review recommendations: | | | |
| 1. Have suggestions been provided for dealing with the referral problem(s) as well as those identified through testing? | | | |
| 2. Are the following included as recommendations? | | | |
| a. A list of priortized annual goals. | | | |
| b. A list of proposed short term objectives for each annual goal. | | | |
| c. Recommended instructional strategies for short term objectives. | | | |
| d. Recommended instructional materials for objectives. | | | |
| e. Recommended related services. | | | |
| f. Recommended possible environmental modification. | | | |
| Comments: | | | |

This checklist was developed by the Southwest Regional Resource Center and Darrell Hart, Educational Support Systems, Inc., in conjunction with a task force Phoenix Area, BIA, Rosella Lawrence, Area Special Education Coordinator.

September, 1979

NAVAJO AREA
Division of Exceptional Programs
Requirements for Contractors/Vendors
for Assessment of Children and Youth

THE CONTRACTOR SHALL:

A. Provide a written assessment for each of the estimated referred Indian Children whose suspected disability/disabilities are in the following categories:

1. Mentally Retarded (EMH, TMH)
2. Specific Learning Disabled
3. Severely Emotionally Disturbed
4. Orthopedically Handicapped
5. Hearing Impaired
6. Visually Impaired
7. Speech Impaired
8. Other Health Impaired

Written assessments must be in accordance with P. L. 94-142 Regulations, see attachment A. Test instruments to be used must be those which have been accepted by the State of for Special Education. Testing procedures must be in accordance with the publishers' directions and accepted testing practices for second language learners.

The assessments must identify and describe the child's educational, social, and physical strengths and weakness, and recommended strategies to meet the child's needs. All written assessments will be in the format as designed by the diagnostician from the agency where assessments are to take place.

The evaluations conducted shall be appropriate for each child and shall consist of chart reviews and/or preliminary evaluation and/or psychological and educational evaluations.

Each child referred will be screened for visual impairments, hearing impairments, orthopedic handicaps and other health impairments with the appropriate tests and/or techniques and those who indicate need for medical or other evaluation or treatments shall be compiled into a list.

More specifically, a comprehensive psycho-educational evaluation shall be conducted only for those children who indicate such a need in a preliminary evaluation or screening.

B. Provide a staff consisting of a multi-disciplinary team which will consist of, but not be limited to, the following personnel, dependent on the suspected type of exceptionality being diagnosed:

1. Educational diagnosticians certified in the State of
2. Psychometrist, Assistant School Psychologist certified in the State of
3. Qualified audiologists
4. Speech pathologist certified in the State of
5. Diagnostic Assistant, if used, must be bilingual in English and Navajo
6. Psychological associates to assist psychologists and educators in their duties.

C. Where applicable provide documentation of State Certificate of staff to the Contracting Officer's Representative, by and no later than two weeks from the person's employment.

PERFORMANCE SCHECULE:

A. Children presently enrolled in school will be assessed at the school in which they are enrolled.

B. Children not presently enrolled in school, but who have been referred will be assessed at the school location closest to their homes. Arrangements for time and location for these assessments will be the responsibility of the Bureau of Indian Affairs and will be coordinated with the contractor.

C. The majority of the assessments will occur between and with some to be done during the period of Such assessments that are to be done during the months of June, July, and August shall be coordinated with the Bureau of Indian Affairs.

D. The final written assessment for each child tested will be submitted to the Bureau of Indian Affairs no later than 30 working days after testing for that child has been completed. (See Attachment B.)

E. The period of this contract unless otherwise specified will be from through

CRITERIA FOR SELECTION OF THE CONTRACTOR:

1. The contractor has had previous experience with the assessment of Navajo children who are suspected of having disabilities of a Special Education nature since the advent of P.L. 94-142. Weight 25%.

2. The contractors proposal is within the budgetary constraints specified in this request. 75%.

## Attachment A

Protection in Evaluation Procedures
121a.530 - General
121a.531 - Pre-placement Evaluation
121a.532 - Evaluation Procedures
121a.533 - Placement Procedures
121a.534 - Re-evaluation

### 121a.530 - General

(a) Each state educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of 121a.530 - 121a.534.

(b) Testing and evaluation materials and procedures used for the purpose of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

### 121a.531 - Pre-placement Evaluation

Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of 121a.532.

### 121a.532 - Evaluation Procedures

State and local educational agencies shall insure at a minimum that:

(a) Tests and other evaluation materials:

1. Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasiable to do so;

2. Have been validated for the specific purpose for which they are used; and

3. Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criteria for determining an appropriate education program for a child; and

(e) The evaluation is made by a multi-disciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

121a.533 - Placement Procedures

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior;

2. Insure that information obtained from all of these sources is documented and carefully considered;

3. Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of evaulation data, and the placement options; and

4. Insure that the placement decision is made in conformity with the least restrictive environment rules in 121a.550 - 554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with 121a.340 - 121a.349 of Subpart C.

121a.534 - Re-evaluation

Each state and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with 121a.340 - 121a.349 of Subpart C; and

(b) That an evaluation of the child, based on procedures which meet the requirments under 121a.532, is conducted every three (3) years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

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# Attachment B

## Vendor psychologist agreement form

The Navajo Area Education Office, Bureau of Indian Affairs, expects that psychoeducational services for exceptional children, purchased through a vendor, will meet the following criteria:

A. General writing style:

___Report written so teacher can understand it

___Does not contain items which go beyond objective data of the tests (e.g., "brain damage," "neurological dysfunction," "defective," are beyond scope of the psychoeducational testing; hypotheses about marital conflict, familial tendencies, etc., are examples of other types of items that must be avoided)

B. Clarity of diagnostic statement:

___Diagnostic statement phrased in the BIA classification terms followed by any necessary modifications

___Conditions backed up with reference to data

___Contains evidence that the diagnosed conditions adversely affect educational performance

C. Diagnosis of mental retardation:

___Rules out cultural, linguistic, environmental or severe emotional factors as the cause of handicap

___Examines adaptive behavior in nonacademic settings

___Documents intellectual functioning when factors above (cultural, etc., and adaptive behavior in other settings) have been controlled

D. Diagnosis of specific learning disability:

___Confirms average potential in intellectual functioning

-continued-

D. (continued)

___Shows significant delay in some academic areas

___Rules out vision, hearing, motor handicap, mental retardation, emotional disturbance, cultural or economic disadvantage as primary causes of handicap

___Backs up conclusions with data

E. Diagnosis of seriously emotionally disturbed:

___Specifies the factors that suggest emotional disturbance

___Describes evidence which suggests student cannot be adequately or safely educated without the provision of special education

___Differentiates between chronic and temporary distress

___Rules out intellectual, sensory and health factors as cause of dysfunction

F. Diagnosis for deaf, deaf blind, hard of hearing, multihandicapped, orthopedically or otherwise health impaired, speech impaired or visually handicapped:

___Suggests referral to appropriate professionals for further diagnosis

___Includes assessment information from the specialized area of concern

G. Diagnosis that student's problem is primarily cultural/linguistic or environmental:

___Considers the possibility of a handicapping condition in addition to the cultural/linguistic or environmental factors

H. Findings of no handicap

___Accounts for referral problem

___Handles inconsistencies between teacher's and examiner's observations

-continued-

H. (continued)

___Indicates if the problems are related to educational disadvantages, language background or socio-cultural background

I. IEP implications

___Overall report information, style, approach, etc., will facilitate use by the IEP committee as it writes present levels of educational performance, annual goals, etc.

# APPENDIX B. IDENTIFICATION OF BIAS IN TESTING

# IDENTIFICATION OF BIAS IN TESTING: A CHECKLIST AND GUIDE*

## Introduction

Tests have become central to the processes of screening and selecting applicants for schools, training, and employment. They have served the purpose for which they were designed: to discriminate among individuals and to identify those candidates likely to succeed in a particular job or educational program. However, they have failings that have received inadequate attention. They have become a barrier to preferred employment and higher education for some cultural groups. It is difficult for minority individuals to score as high on pre-employment and intelligence tests as majority group, middle-class job applicants and students. This fact has been demonstrated by the disproportionately high representation of minority group children in classes for the educable mentally retarded.

Even though racial discrimination has not been an obvious factor, the use of tests has effectively denied job and education opportunities to minority groups. The majority of judicial opinions have called for the immediate cessation of assessment practices that place culturally different children at a disadvantage. Many local educational agencies have been required to change their identification procedures and to adopt methods that take into account the child's cultural background and native language. Professional groups in psychology and education have also initiated efforts to ensure that more culturally unbiased tests are used and that their results are interpreted in the light of the child's cultural background.

## The Intent of Testing

Test data is normally used for at least two purposes in special education. First, it provides a part of the information which determines the child's eligibility for placement in a specialized program. Second, it serves as part of a total assessment of a child's overall intellectual functioning, including his intellectual development, social-emotional adjustment, developmental progress, current level of academic skill, etc. Information obtained from this assessment may be used to shape the child's educational program to meet his individual needs. Test bias can interfere with the validity of the conclusions drawn in the second case, but the use of test scores to make placement decisions is susceptible to especially large errors which may work to the detriment of culturally different children. The use of tests with these children and without corroborating evidence (such as parent interview information) may result in incorrect blanket assumptions about the child's skills.

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## Use of Tests with Culturally Different Children

Because of recent social upheaval and its extensive coverage in the media, our concern for culture-fairness has often been limited to the testing of black, American Indian and Spanish-surnamed children. There are other subgroups of children whose experience, language and values are so different from the dominant culture that use of traditional tests without consideration of these factors will almost certainly reduce the validity of test results. Pennsylvania Dutch children, for example, grow up without television and radio. Their language, a combination of German syntactic and tonal influences and English vocabulary, is unfamiliar to most examiners. The values of the Pennsylvania Dutch are tied to their roots in an earlier agrarian society where frills and luxuries were unknown. These differences in experience, language and values made the uncritical use of many tests inappropriate for these children.

Culturally different children are often deprived of significant learning experiences in their early life. However, in many cases they do not fall into an identifiable subgroup. These children, whether members of an identifiable group or simply recipients of a widely different early life experience, deserve the opportunity to demonstrate their skills in assessment situations that at least approach culture-fairness.

## Evaluation of Testing for Culture-Fairness

Listed below is a set of criteria for the evaluation of tests (particularly norm-referenced tests) and test settings to determine their degree of cultural-bias. The rating criteria are organized according to problem areas which may jeopardize the validity of test results for culturally different children.

Examination of the fairness of an assessment instrument requires consideration of: 1) the technical adequacy of the test; 2) the content of the test itself; 3) the conditions under which the test is administered; 4) the special characteristics of the pupil and the preparation of the pupil for testing; and 5) the sensitivity and experience of the examiner. The following checklist is a format for evaluating the fairness of assessment procedures. Individual terms on the checklist are identified as "essential" or "desirable".

## Technical Adequacy

A test must be technically adequate before the scores derived from it can be considered significant for decision-making purposes. The technical adequacy of the test should be judged by the adequacy of its standardization, the reliability of the test, and the test's validity.

No test will qualify on every item. After carefully examining the testing manual and the accompanying materials, check the following:

| | | Yes | No |
|---|---|---|---|
| 1. Does the test author describe the specific purposes for which the test is designed? | (essential) | ___ | ___ |
| 2. Are warnings given concerning common misuses of test results? | (essential) | ___ | ___ |
| 3. Are the limitations of the test carefully described in the manual? | (desirable) | ___ | ___ |
| 4. Has the test been recently standardized or restandardized? | (desirable) | ___ | ___ |
| 5. Does the author describe the group on whom the test is standardized in terms of: | | | |
| a. geographical region | (essential) | ___ | ___ |
| b. sex | (essential) | ___ | ___ |
| c. socioeconomic status | (essential) | ___ | ___ |
| d. age and/or grade | (essential) | ___ | ___ |
| e. number | (essential) | ___ | ___ |
| f. specific handicapping conditions | (essential) | ___ | ___ |
| g. ability level | (essential) | ___ | ___ |
| 6. Has the individual you are testing had comparable (though not necessarily identical) background experiences as those in the standardized group? | (essential) | ___ | ___ |
| 7. Are the behaviors sampled by the test clearly described? | (essential) | ___ | ___ |
| 8. Are the test directions sufficiently clear and straight forward so as to minimize confusion in administration and scoring? | (essential) | ___ | ___ |

| | | Yes | No |
|---|---|---|---|
| 9. Does the test author provide evidence for the reliability of the test in terms of: | | | |
| a. internal consistency | (desirable) | ___ | ___ |
| b. test-retest reliability | (essential) | ___ | ___ |
| c. alternate form reliability | (desirable) | ___ | ___ |
| 10. Are standard errors of measurement (SEM) provided for the test and each of its subtests? | (essential) | ___ | ___ |
| 11. Does the author provide data regarding the SEMs of the test for each age/grade level and for specific sub-populations? | (desirable) | ___ | ___ |
| 12. Are the procedures and samples used to determine reliability adequately described? | (essential) | ___ | ___ |
| 13. Is the reliability sufficient to use the test for decision-making (such as placement)? | | | |
| a. $r_{XX} > .90$ | (desirable) | ___ | ___ |
| b. $r_{XX} > .80$ | (essential) | ___ | ___ |
| 14. Are the reliability studies sufficient to assure you that the test is a reliable measure of the behaviors it is designed to sample? | (essential) | ___ | ___ |
| 15. Does the author provide evidence of validity for each specific purpose for which the test is designed? | (desirable) | ___ | ___ |
| 16. If the test is an achievement test: | | | |
| a. Is there evidence for content validity (i.e., evidence that the test measures the content it claims to measure)? | (essential) | ___ | ___ |

| | | Yes | No |
|---|---|---|---|
| b. Is the content measured relevant to the curriculum used with the children you are testing? | (essential) | ___ | ___ |
| c. Are the behaviors sampled by the test representative of the wide range of behaviors which could be sampled? | (desirable) | ___ | ___ |
| 17. Does the test manual furnish information regarding the predictive validity of the test, stating how well the test correlates with potential achievement or development? | (essential) | ___ | ___ |
| 18. Does the test manual present information regarding the test's concurrent validity, stating how well it correlates with other tests or measures which sample the same behaviors? | (essential) | ___ | ___ |
| 19. Does the test manual present evidence of validity for each kind of inference that could be made about the child using test data? | (desirable) | ___ | ___ |

These criteria for technical adequacy should be consulted when you are considering a test for use with any child. They represent minimum standards a test should meet in order to be used for decision-making and program planning.

Further information regarding criteria for technical adequacy can be obtained from The Standards for Educational and Psychological Tests, published jointly by the American Educational Research Association, American Psychological Association and the National Council on Measurement in Education.

## Item Content

The controversy about culture-fair testing has often focused on the role played by item content. The Wechsler Intelligence Scale for Children, for example, was noted for the fact that the drawings of people used for certain items were white and middle-class in dress and appearance. It was suggested that the absence of other cultural groups made it difficult for minority children to involve themselves in the tasks associated with the figures. In revision of the WISC to the WISC-R an attempt was made to correct this imbalance by including figurative representations of other cultural groups.

More than any other source of bias in testing, item content requires the examiner to be familiar with the cultural experience of the child. The examiner must be aware of what can be expected of the child, based not only on developmental norms, but also on the kind of early experiences the child has probably had. This kind of information cannot be geared to assumptions about the child's home life, based on knowledge of children from a similar background. Rather, it should be collected through skillful parent interviews which give the examiner a clear picture of the child's past opportunities for certain learning experiences.

The following criteria should be considered in evaluating the extent of bias which a particular test may have for a culturally different child.

| | | | Yes | No |
|---|---|---|---|---|
| 1. | Are the task demands of the test items fair for the child, in light of the child's experience? | (desirable) | ___ | ___ |
| 2. | Has the publisher found the content of the test to be equally familiar across cultural groups? | (desirable) | ___ | ___ |
| 3. | Is the syntax, at least of the verbal test items, in common standard English, instead of complex, formal, "superstandard" English (e.g., However, in and of itself," Gates-MacGinitie Comprehension Subtest - D Form 1)? | (essential) | ___ | ___ |
| 4. | Do the test items take into account differences in values and adaptive behavior across subgroups (e.g., without penalizing children from those groups where violent solutions to interpersonal conflicts are encouraged and preferred)? | (desirable) | ___ | ___ |
| 5. | Are the test items relatively free of vocabulary items that have different meanings for different cultural groups? | (desirable) | ___ | ___ |

## Testing Conditions

The testing environment must be carefully arranged and monitored to ensure that physical and interpersonal variables do not interfere with the child's performance. Many of the following criteria can be met by careful selection of a test setting and thorough preparation by the examiner. Ideal circumstances usually cannot be created, however, and the examiner must rely on his own judgment to determine the effect that external stimuli, distracting noises, or the child's behavior will have on his test performance.

| | | Yes | No |
|---|---|---|---|
| 1. Were the room conditions appropriate? (i.e., comfortable, well-lighted, well-ventilated, etc.)? | (essential) | ___ | ___ |
| 2. Was the test setting free from external distractions (such as outside noise) and interruption? | (essential) | ___ | ___ |
| 3. Were verbal directions stated clearly and loudly? | (essential) | ___ | ___ |
| 4. Did the student seem to understand what was asked of him/her? | (essential) | ___ | ___ |
| 5. Did the testing conditions conform to those suggested in the test manual? | (essential) | ___ | ___ |

As with the technical adequacy criteria, criteria for test conditions have relevance to the testing of all children, not only the culturally different.

## Characteristics of the Child

The child's characteristics must be taken into consideration at every step of the evaluation process. The assignment of psychologist, case worker, or diagnostician should also be made with the language and cultural background of the child in mind. The selection of tests and materials should also depend on the characteristics of the child. Moreover, the test should be conducted with special attention to the child's performance pattern. For example, special note should be made of possible indicators of cultural bias such as an error made on an item whose difficulty is far below that of others which the child solved correctly. Finally, the language and cultural background of the child should be kept in mind when interpreting test results, with special attention to patterns of success and failure across different tasks, which may reflect the child's acculturation and early life experiences. The child's behavior during testing must be viewed in the light of what he/she is presumed to bring to the testing situation. The following criteria may be referred to in assessing the importance of a child's background when interpreting his/her test performance.

| | | Yes | No |
|---|---|---|---|
| 1. Was the test administerd in the child's primary language, or in some combination of languages (if the child is bilingual)? | (essential) | ___ | ___ |
| 2. Was the examiner sensitive to culturally-related differences in the child's syntax? | (essential) | ___ | ___ |
| 3. Was the examiner aware of any difficulty in the child's understanding of the examiner's pronunciation? | (essential) | ___ | ___ |
| 4. Was the examiner sensitive to the possibility of the child's finding certain sounds in the examiner's speech difficult to discriminate? | (desirable) | ___ | ___ |
| 5. Did the examiner consider differences between what is valued in the child's own culture and the behavior that is necessary for success on the test (e.g., speed of test completion, or competition may not be highly valued in another culture)? | (desirable) | ___ | ___ |
| 6. Was the examiner aware of any behavioral attributes which might have interfered with the child's test performance (such as shyness, distractibility, implusiveness, disorganization, hyperactivity, etc.)? | (essential) | ___ | ___ |
| 7. Was the examiner sensitive to the child's own perceived likelihood of success and its influence on his/her test performance? | (desirable) | ___ | ___ |

| | | Yes | No |
|---|---|---|---|
| 8. Was the examiner aware of any child reaction to the examiner's status (as a school adult, as an adult/female, as the "gatekeeper of special education") in evaluating the child's test behavior? | (desirable) | ___ | ___ |
| 9. Was the child free of specific physical or sensory handicapping conditions which would adversely affect performance on the test? | (essential) | ___ | ___ |

## Examiner Characteristics

The examiner is responsible for determining the appropriateness of certain tests and procedures for culturally different children. He also must observe the child's behavior during testing and study his notes afterward to ascertain whether the obtained results are an accurate estimate of the child's acquired skills and level of development. The examiner must also be sure that he has controlled, to the best of his ability, another factor that can interfere with the culturally different child's performance -- himself.

The examiner brings a whole gamut of influences to the test situation which may affect the test performance of a culturally different child. Some are outlined below as criteria that may be considered in evaluating the culture-fairness of a test administration.

| | | Yes | No |
|---|---|---|---|
| 1. Was the examiner familiar with the cultural experience of the child being tested? | (desirable) | ___ | ___ |
| 2. Was the examiner able to establish rapport with the child being tested? | (essential) | ___ | ___ |
| 3. Was the examiner relatively free of expectations and attitudes which might affect the child's approach to the task presented? | (desirable) | ___ | ___ |
| 4. Was the examiner sufficiently aware of the child's behavior (such as facial expression, attending behavior and interest) to determine the child's understanding of the test demands? | (essential) | ___ | ___ |

| | Yes | No |
|---|---|---|
| 5. Was the examiner sufficiently familiar with the test instructions to allow him/her to attend to the child's behavior, rather than to the instruction for the next activity? (essential) | ___ | ___ |

## Conclusion

It should be apparent to the concerned evaluator that a testing device that even approaches a reasonable level of fairness across cultural groups does not yet exist. To complicate matters, those tests where score differences between cultural groups are minimal lack the same level of predictive validity evidenced by more culturally biased tests. However, there is one alternative available to the test user which will have to suffice until the long-awaited day of unbiased testing arrives. The recommended strategy is to make testing only one part of a more comprehensive process for collecting information about children. The major criticism of testing procedures, which resulted in discriminatory placement patterns, concerned examiners' uncritical reliance on the use of a single test score when making placement decisions. By making test information only one part of a global picture of the child's functioning, the probability of making an inappropriate placement decision is dramatically reduced. But more importantly, a great deal of highly useful clinical and educational information is collected through this extended process. The specific kinds of information include observational data, developmental histories, medical histories, family histories, and other parent interview information. They can serve to corroborate (or call into question) the validity of test information that by itself may or may not accurately reflect the child's level of functioning.

## References

American Educational Research Association, American Pshychological Association, & The National Council on Measurement in Education. *The standards for educational and psychological tests*. Washington, D.C.: American Psychological Association, 1974.

# APPENDIX C. ACCESSIBILITY CHECKLIST

# APPENDIX C

## Accessibility Checklist*

The following checklist, adapted from the 1979 ANSI standards, is suggested as a guide for evaluating and planning a facility and site in terms of accessibility for the handicapped. Such an evaluation should be completed for each facility and updated periodically. Specific items may be altered to meet particular characteristics or requirements of a school building or school system.

Name of Building________________________________________

Address________________________________________________

Person completing checklist_____________________Date__________

Each question requires a yes, no, or not applicable (N/A) response, to be indicated by a check in the appropriate blank. If the evaluator wishes to provide additional comments or recommendations on a particular item, an asterisk should be placed beside the check. The comments can then be recorded on a separate sheet and attached to the checklist. The comments should be lettered and numbered to correspond with the checklist item addressed.

| | Yes | No | N/A |
|---|---|---|---|
| A. Accessible Route | | | |
| 1. Is at least one accessible route provided from: | | | |
| a. public transportation stops? | ___ | ___ | ___ |
| b. accessible parking? | ___ | ___ | ___ |
| c. public streets or sidewalks? | ___ | ___ | ___ |
| 2. Does at least one accessible route connect accessible buildings on the site? | ___ | ___ | ___ |
| B. Ground and Floor Surfaces | | | |
| 1. Are ground and floor surfaces stable, firm, and relatively non-slip under all weather conditions? | ___ | ___ | ___ |
| 2. If a carpet is used, is it attached securely, with exposed edges fastened? | ___ | ___ | ___ |

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*This checklist is reproduced with permission. It is from "Facilities Planning Guide for Special Education Programs: Planning Accessibility for the Handicapped in Public Schools," by K. W. Brooks for the National Association of State Directors of Special Education. Copies of the complete publication, which contains requirements and specifications, may be obtained from NASDSE, 1201 16th St., N.W., Washington, D.C. 20036, $7.00 per copy.

| C. Parking and Passenger Loading Zones | Yes | No | N/A |
|---|---|---|---|
| 1. Are there parking spaces for disabled people located near an accessible entrance? | ___ | ___ | ___ |
| 2. Is each parking space at least 96 inches wide with an access aisle at least 60 inches wide? | ___ | ___ | ___ |
| 3. Are designated parking spaces indicated by the international symbol of accessibility? | ___ | ___ | ___ |
| 4. Do passenger loading zones provide an access aisle at least 48 inches wide and 20 feet long alongside the pull-up space for vehicles? | ___ | ___ | ___ |
| D. Curb Ramps | | | |
| 1. Are curb ramps at least 36 inches wide? | ___ | ___ | ___ |
| 2. Are curb ramps free of possible obstruction by parked vehicles? | ___ | ___ | ___ |
| E. Ramps | | | |
| 1. Do ramps have a slope of no more than 1:12 (that is, one foot rise for every 12 feet of horizontal run) and a maximum rise of 30 inches? | ___ | ___ | ___ |
| 2. Do ramps have level landings at bottom and top of each run? | ___ | ___ | ___ |
| 3. Are there handrails on both sides, either continuous or extending at least 12 inches beyond the top and bottom? | ___ | ___ | ___ |
| 4. If the building is used mostly by children, is there a lower set of handrails to assist them? | ___ | ___ | ___ |
| 5. Do ramps have edge protection to prevent people from slipping off? | ___ | ___ | ___ |
| 6. Are outdoor ramps designed so that water will not accumulate on walking surfaces? | ___ | ___ | ___ |
| F. Stairs | | | |
| 1. Do all steps have uniform riser heights and tread widths? | ___ | ___ | ___ |
| 2. Are stair treads more than 11 inches wide? | ___ | ___ | ___ |
| 3. Do stairways have handrails at both sides, continuous or extending at least 12 inches beyond the top riser and at least 12 inches plus the width of one tread beyond the bottom riser? | ___ | ___ | ___ |
| 4. Are gripping surfaces of handrails unobstructed? | ___ | ___ | ___ |

|  | Yes | No | N/A |
|---|---|---|---|
| G. Elevators |  |  |  |
| 1. If there is an elevator, is it automatic and self-leveling? |  |  |  |
| 2. Are call buttons 42 inches above the floor? |  |  |  |
| 3. Do call buttons have visual signals? |  |  |  |
| 4. Do elevator doors open and close automatically, and reopen if there is an obstruction? |  |  |  |
| 5. Do the elevator cars provide space for wheelchairs to enter, reach the controls, and exit? |  |  |  |
| H. Doors |  |  |  |
| 1. Do doorways have a minimum clear opening of 32 inches? |  |  |  |
| 2. Are thresholds at doorways less than a half-inch (or 3/4 inch for exterior sliding doors)? |  |  |  |
| 3. Are raised thresholds and floor levels at doorways beveled with a slope no greater than 1:2? |  |  |  |
| 4. Are door handles, pulls, latches, and locks easy to grasp with one hand? |  |  |  |
| 5. Do kickplates on doors with closers cover the door up to 16 inches from the bottom edge? |  |  |  |
| 6. If a door has a closer, is it adjusted to have a suitable delayed action? |  |  |  |
| I. Entrances |  |  |  |
| 1. Is at least one principal entrance part of an accessible route? |  |  |  |
| 2. Is the accessible entrance connected by an accessible route to all accessible spaces in the building or facility? |  |  |  |
| J. Drinking Fountains |  |  |  |
| 1. If drinking fountains are provided, is at least one on an accessible route? |  |  |  |
| 2. Is the spout 36 inches or lower from the floor, in front of the unit, and providing a flow of water at least 4 inches high? |  |  |  |
| 3. Do wall- and post-mounted units have a clear knee space and minimum clear floor space to allow approaches by a wheelchair? |  |  |  |
| K. Water Closets |  |  |  |
| 1. Are water closets 17 to 19 inches high? |  |  |  |
| 2. Are flush controls hand operated? |  |  |  |

| L. Toilet Stalls | Yes | No | N/A |
|---|---|---|---|
| 1. Are accessible toilet stalls on an accessible route? | | | |
| 2. Do toilet stalls meet standards of minimum depth requirements for wall-mounted water closets (56 or 66 inches) or for floor-mounted water closets (59 or 69 inches)? | | | |
| 3. Are grab bars provided? | | | |
| **M. Urinals** | | | |
| 1. Are urinals a maximum of 17 inches above the floor? | | | |
| 2. Is there a clear floor space 30 x 48 inches in front of the urinals to allow forward approach? | | | |
| 3. Are flush controls hand operated and mounted no more than 44 inches above the floor? | | | |
| **N. Lavatories and Mirrors** | | | |
| 1. Are lavatories mounted with a clearance at least 29 inches from the floor to bottom of apron? | | | |
| 2. Is there a clear floor space 30 x 48 inches in front of a lavatory and extending a maximum of 19 inches underneath? | | | |
| 3. Are hot water and drain pipes under lavatories insulated or otherwise covered, with no sharp or abrasive surfaces under lavatories? | | | |
| 4. Are acceptable mechanisms used for faucets? (i.e., lever, push-type, electronic) | | | |
| 5. If a self-closing valve is used, does the faucet remain open for at least 10 seconds? | | | |
| 6. Are mirrors mounted with the bottom edge no higher than 40 inches from the floor? | | | |
| 7. If used by ambulatory people and wheelchair users, are mirrors at least 74 inches high at topmost edge? | | | |
| **O. Alarms** | | | |
| 1. If emergency warning systems are provided, do they include audible and visual alarms? | | | |
| 2. Do audible alarms meet decibel standards? | | | |
| 3. Do illuminated emergency exit signs flash in conjunction with audible emergency alarms? | | | |
| 4. Are there tactile warning textures on walking surfaces that contrast with textures of surrounding surface? | | | |
| 5. Are there tactile warnings on doors to hazardous areas? | | | |

| O. Alarms (continued) | Yes | No | N/A |
|---|---|---|---|
| 6. Do all stairs have tactile warnings at the top of stair runs? | ___ | ___ | ___ |
| 7. If there is a hazardous vehicular area, does a continuous 36-inch wide tactile warning texture indicate the boundary between pedestrian and vehicular areas? | ___ | ___ | ___ |
| 8. Are all textured surfaces for tactile warnings standard within the building, facility, site or complex of buildings? | ___ | ___ | ___ |
| **P. Signage** | | | |
| 1. Do all signs with emergency or circulation information comply with standards for proportion of characters and raised or indented characters? | ___ | ___ | ___ |
| 2. Do characters and symbols contrast in color with their background (preferably light characters on a dark background)? | ___ | ___ | ___ |
| 3. Is the international symbol of accessibility used to identify accessible facilities? | ___ | ___ | ___ |
| **Q. Telephone** | | | |
| 1. Do public telephones provide a clear space at least 30 x 48 inches, with bases, enclosures and fixed seats not impeding approach by wheelchair users? | ___ | ___ | ___ |
| 2. If a telephone is mounted diagonally in a corner, is the highest operable part no higher than 54 inches above the floor? | ___ | ___ | ___ |
| 3. If a telephone is in an enclosure, does the entrance have a clear opening at least 30 inches wide? | ___ | ___ | ___ |
| 4. Is the cord from telephone to handset at least 29 inches long? | ___ | ___ | ___ |
| **R. Seating, Tables, and Work Surfaces** | | | |
| 1. Is there at least one fixed or built-in seating, table, or work surface provided in accessible spaces? | | | |
| 2. If seating spaces for people in wheelchairs are provided at tables, counters, or work surfaces, is there a clear floor space that does not overlap knee space more than 19 inches? | ___ | ___ | ___ |

# APPENDIX D. STAFFING GUIDE FOR PROGRAMS FOR THE HANDICAPPED

## Appendix D

## STAFFING GUIDE FOR PROGRAMS FOR THE HANDICAPPED

| Type of Position | Quantity | Criteria |
|---|---|---|
| 1890 General Operations | | |
| Section Chief | 1 | Per Agency |
| Clerk/Typist | 1 | Per Agency |
| Funds Management Clerk | 1 | Per Agency |
| Special Education Programs Coordinator | 1 | Per school with handicapped enrollment of 80 or more (may employ one half-time coordinator in schools with 40-80 handicapped children enrolled) |
| 1812 Child Find | | |
| Child Find Technician | 1 | Per Agency |
| 1813 Child Assessment | | |
| Diagnostician | 1 | Per 200-250 handicapped children in Agency (minimum of 1 per Agency) |
| Interpreter | 1 | Per 300 handicapped children in Agency (minimum of 1 per Agency) |
| 1817 Parental Involvement | | |
| Social Worker Technician | 1 | Per school with handicapped enrollment of 50 or more (where geographically feasible schools may combine enrollment count and share position) |
| MSW Social Worker | 1 | Per Agency |
| Educable Mentally Handicapped | | |
| Teacher | 1 | Per 15 students assessed as Educable Mentally Handicapped |
| Classroom Aide | 1 | Per 15 students assessed as Educable Mentally Handicapped |

## STAFFING GUIDES FOR PROGRAMS FOR THE HANDICAPPED

| Type of Position | Quantity | Criteria |
|---|---|---|
| Hard of Hearing | | |
| Teacher | 1 | Per 15-20 students assessed as Hard of Hearing (may serve as itinerant to multiple schools) |
| Multihandicapped | | |
| Teacher | 1 | Per 4-6 students assessed as Multihandicapped |
| Classroom Aide | 2 | Per 4-6 students assessed as Multihandicapped; staff needed depends on severity of handicap |
| Orthopedically Impaired | | |
| Physical Therapist | 1 | Per 10 students assessed as Orthopedically Impaired |
| Occupational Therapist | 1 | Per 20 students assessed as Orthopedically Impaired |
| Other Health Impaired | | |
| Teacher | 1 | Per 10 students (includes homebound; may serve as itinerant to multiple schools) |
| Teacher Aide | 1 | Per 10 students (may serve as itinerant to multiple schools) |
| Seriously Emotionally Disturbed | | |
| Teacher | 1 | Per 6-10 students in self-contained room for S.E.D. |
| Classroom Aide | 1 | Per 6-10 students in self-contained room for S.E.D. |
| Teacher | 1 | Per 15 students in resource room for S.E.D. |
| Classroom Aide | 1 | Per 15 students in resource room for S.E.D. |

-continued-

## STAFFING GUIDES FOR PROGRAMS FOR THE HANDICAPPED

| Type of Position | Quantity | Criteria |
|---|---|---|
| Seriously Emotionally Disturbed (continued) | | |
| | | Schools may operate combination self-contained and resource room; criteria to be adjusted to reflect combination |
| School Psychologist | 1 | Per Agency per 25-100 students assessed S.E.D. |
| Specific Learning Disabled | | |
| Teacher | 1 | Per 15-25 students assessed as Learning Disabled |
| Classroom Aide | 1 | Per 15-25 students assessed as Learning Disabled |
| Speech Impaired | | |
| Teacher or Speech Therapist | 1 | Per 25-50 students assessed as Speech Impaired (may serve as itinerant to multiple schools) |
| Trainable Mentally Handicapped | | |
| Teacher | 1 | Per 6-8 students assessed as Trainable Mentally Handicapped |
| Classroom Aide | 1 | Per 6-8 students assessed as Trainable Mentally Handicapped |
| Visually Handicapped | | |
| Teacher | 1 | Per 15-20 students assessed as Visually Handicapped (may serve as itinerant to multiple schools) |

# STAFFING GUIDES FOR PROGRAMS FOR THE HANDICAPPED

| Type of Position | Quantity | Criteria |
|---|---|---|
| Student Activities | | |
| Recreation Assistant | 1 | Per 50 handicapped students enrolled |
| Recreation Aide | 1 | Per 50 handicapped students enrolled |
| Attendance Aide | 1 | Per 100 handicapped students enrolled (schools may combine enrollment and share position) |
| Homeliving | | |
| Dormitory Aide | 1 | Per 12 students assessed as Educably Mentally Handicapped in addition to regular dormitory staff |
| Dormitory Aide | 5 | Per 6-10 students assessed as Trainable Mentally Handicapped |
| Dormitory Aide | 5 | Per 10-15 students assessed as Seriously Emotionally Disturbed in addition to regular dormitory staff |
| Dormitory Aide | 5 | Per 6-10 students assessed as Multi-handicapped<br>Additional aids may be justified on the basis of seriousness of handicapping conditions |

Because of the individuality of handicapping conditions, it is not possible to set exact criteria to cover all situations. The above is intended to serve only as a general guide. Written justifications should be submitted to increase staff if additional staff is needed to carry out the intent of the Education of All Handicapped Children Act of 1975.

# APPENDIX E. LEA APPLICATION FORMAT

# GENERAL DIRECTIONS FOR COMPLETION OF THE LEA APPLICATION

1. APPLICATIONS WILL BE DUE IN THE CENTRAL OFFICE ON OR BEFORE JULY 31, 1980. NO APPLICATIONS WILL BE ACCEPTED AFTER SEPTEMBER 1, 1980.

2. FOR APPLICATIONS RECEIVED BY JULY 31 AND APPROVED, 75% OF THE PART B ALLOCATIONS WILL BE PROCESSED BY THE FIRST WEEK IN SEPTEMBER.

3. THE DECEMBER 1 CHILD COUNT WILL BE DUE NO LATER THAN DECEMBER 15, 1980. THE REMAINING 25% OF THE PART B ALLOCATIONS WILL BE PROCESSED UPON RECEIPT OF THE COUNT IN THE CENTRAL OFFICE.

   AMENDMENTS FOR INCREASE OF FUNDS DUE TO THE CHILD COUNT MUST ACCOMPANY THE DECEMBER CHILD COUNT. AMENDMENTS WILL BE DUE DECEMBER 15, 1980.

4. ANY ADDITIONAL AMENDMENTS SUBMITTED TO THE CENTRAL OFFICE WILL NOT BE RECEIVED AFTER MARCH 30, 1981.

5. THE DIRECTIONS FOR THE APPLICATION ITSELF SHOULD BE SELF-EXPLANATORY. ANY QUESTIONS REGARDING ITS COMPLETION SHOULD BE REFERRED TO THE CENTRAL OFFICE, DIVISION OF EXCEPTIONAL EDUCATION, AT (202) 343-5517.

6. NO LESS THAN 3 COPIES OF THE APPLICATION SHOULD BE FORWARDED TO THE CENTRAL OFFICE.

7. ALL APPLICATIONS MUST BE TYPED. ONLY THOSE FORMS INCLUDED IN THE APPLICATION WILL BE ACCEPTED, SUBSTITUTIONS MAY NOT BE MADE.

8. SCHOOLS ARE TO FORWARD THEIR COMPLETED APPLICATIONS TO THE AGENCY OFFICE FOR SUBMISSION TO THE CENTRAL OFFICE. AGENCIES AND AREA OFFICES ARE TO SEND COMPLETED APPLICATIONS TO:

   BUREAU OF INDIAN AFFAIRS
   DIVISION OF EXCEPTIONAL EDUCATION
   MAIL CODE 507
   18th & C STREETS, N.W.
   WASHINGTON, D.C. 20240

   ENVELOPES SHOULD BE IDENTIFIED "LEA APPLICATION" IN THE LOWER LEFT HAND CORNER TO AVOID DELAYS.

## EDUCATION OF THE HANDICAPPED ACT, P.L. 94-142

## LEA APPLICATION, FY 1980

APPLICANT NAME (LEA)

MAILING ADDRESS

PROGRAM DIRECTOR/WRITER

TITLE

I certify that to the best of my knowledge all data and information in this program is accurate and correct and that this plan fulfills all of the requirements of the Education of the Handicapped Act as amended, Section 504 of the Rehabilitation Act of 1973, the Family Education Rights and Privacy Act, and the General Education Provisions Act, and that in case of a multi-funded program, the requirements of each granting authority are satisfied when considered separately.

Signature of Responsible Official

Title

Date

FOR CENTRAL OFFICE USE ONLY:

## ASSURANCES

As the Responsible Operating Official of the ______________________________

__________________, I hereby give the following assurances:

A. That all handicapped children within this jurisdiction will have the right to a free appropriate education.

B. A Child Find Effort will continue and all referred children will be identified, located and evaluated.

C. This Local Education Agency will maintain records of the Individualized Education Program for each handicapped child, and such program will be established, reviewed, and revised as provided in Section 614 (a)(5) of the law.

D. The Location Education Agency will establish, or revise, whichever is appropriate, an Individualized Education Program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically but not less than annually.

E. This program establishes procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids or services cannot be achieved satisfactorily.

F. This program assures an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate education to such child and provides an opportunity for parents to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to such child.

G. Whenever a complaint has been received (according to provisions for opportunity to present complaints), the parents or guardian shall have the opportunity for an impartial due process hearing. The rights of parents in the hearing are (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions. The parents are afforded the opportunity to appeal the hearing decision.

H. The program establishes and maintains procedures to include written prior notice to the parents or guardian of the child whenever the Local Education Agency proposes to initiate or change or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate education to the child.

Parental consent will be obtained prior to any action related to the evaluation of the child, disclosure of confidential information and the use of such information.

And this program assures the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the local education agencies.

I. Parents will be afforded an opportunity to participate in the IEP conference at a mutually agreed upon time and place and will be afforded alternative solutions should they be unable to attend. Procedures for providing sufficient documentation of attempts to arrange a mutual setting to allow the conference to occur without parents should be included. Provision for interpreters or other facilitators for parental participation in the case of communication barrier on the part of the parent will also be included.

J. This program assures that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it is clearly not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate education program for a child.

K. I assure that if handicapped children are placed in or referred to private schools or facilities by the BIA or this Local Education Agency as a means of carrying out the statutory requirements, those children will be provided special education and related services (a) in conformance with an Individualized Education Program, (b) at no cost to parents, and (c) which meet BIA education standards.

L. I assure that all funds provided for this program and property acquired with those funds will be used in this program for the purposes described.

M. I assure that all equipment, supplies and materials purchased with Part B funds will be titled and tagged apppropriately. An inventory of such will be completed yearly, and all equipment will be entered in the Bureau's Inventory of Accountable Property.

N. For the purposes of this Application, the Local Education Agency shall be defined as the school, Agency or Area (whichever is appropriate) completing the application for Part B funds.

O. An Annual Program Evaluation Report will be prepared and submitted at such time and such form as may be required.

________________________________________
Signature of Responsible Official

________________________________________
Title

________________________
Date

## CERTIFICATION BY LOCAL SCHOOL BOARD

THIS BODY HAS BEEN FULLY CONSULTED IN THE DEVELOPMENT OF THE PROGRAM DESCRIBED IN THIS DOCUMENT, CONCURS WITH THE PLAN, AND RECOMMENDS ITS APPROVAL AS IS RECORDED IN OUR MINUTES DATED ______________________.

______________________________
Name of Presiding Officer

______________________________
Signature

______________________
Date

## CERTIFICATION OF AGENCY SUPERINTENDENT FOR EDUCATION

I HAVE BEEN FULLY CONSULTED IN THE DEVELOPMENT OF THE PROGRAM DESCRIBED IN THIS DOCUMENT, CONCUP WITH THE PLAN, AND RECOMMEND ITS APPROVAL.

______________________________
Name of Official

______________________________
Signature

______________________

## I. Child Identification (§121a.220)

A. Indian children residing within the jurisdiction of the Local Education Agency who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services are identified, located, and evaluated. Upon finding that a child is handicapped, the needed special educational and related services will be provided.

B. All children may be referred to the local school and special education administrator. After parental consent and appropriate screening, they may be referred for an evaluation to determine if they require special education and related services to profit from their education. An ongoing public awareness campaign shall be conducted to make Indian parents aware of special education services available. An active search shall also be conducted for any handicapped child who is not currently receiving any educational services.

## II. Confidentiality of Personally Identifiable Information (§121a.221)

A. It shall be the policy of the LEA in accordance with detailed criteria described under section 617 (c) with regard to confidentiality of personally identifiable information including, but not limited to, notice to parents, access rights, hearing process, consent, safeguards, protecting children's rights, enforcements, and destruction of data.

B. The person responsible for assuring confidentiality procedures in this LEA shall be ________________________________.

C. A list of people who have obtained access to confidential records shall be maintained.

## III. Full Educational Opportunity Goal (§121a.222)

A. It shall be the goal of ________________________(LEA) to provide full educational opportunities to all handicapped children, as described in the current Fiscal Year BIA Annual Program Plan and the Comprehensive Regulations for Special Education.

B. Handicapped children will have available to them the variety of program options normally available to non-handicapped children.

C. Major problem areas encountered in meeting this Full Educational Opportunities Goal are:

## IV. Priorities (§121a.225)

It shall be the policy of ______________________(LEA):

A To establish priorities for providing a free appropriate public education to all handicapped children; first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.

B. Handicapped children receiving an inadequate education shall be determined by monitoring IEP's and locating those children who are not receiving all the special education and related services specified in their IEP.

## V. Parent Involvement

The LEA policy will be to involve parents and guardians of handicapped children in (1) the planning and evaluating of their child's program, and (2) in planning and evaluating full educational opportunities for all handicapped children.

## VI. Least Restrictive Environment (§121a.227)

A. It is the LEA policy that:

(a) To the maximum extent appropriate, handicapped children in public or private institutions or other care facilities are educated with children who are not handicapped, and that

(b) Special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.

B. Each handicapped child's educational placement shall be individually determined, be determined at least annually and based on the child's individualized education program.

C. Except where a handicapped child's individualized education program requires some other arrangement, the child shall be educated in the school which he/she would normally attend if not handicapped.

D. Steps will be taken to assure that the implementation of the least restrictive environment provision will not produce a harmful effect on the child or reduce the quality of services which he/she requires.

## VII. Public Control of Funds (§121a.228)

____________________(LEA) assures:

The control of funds provided under Part B of P.L. 94-142, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property.

## VIII. Excess Cost and Non-Supplanting (§121a.229)

____________________(LEA) assures that Part B funds shall be used:

(a) Only to pay the excess costs directly attributable to the education of handicapped children, and

(b) To supplement and, to the extent practicable, increase the level of 3100 funds expended for the education of handicapped children, and in no case to supplant such funds.

## IX. Comparable Services (§121.231)

Funds will be used by __________________(LEA) to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part.

## X. Information - Reports

________________________(LEA) assures that it will provide for information, (which in the cases of reports relating to performance criteria related to program objectives), as may be necessary to enable the BIA/ Central Office to perform its duties under this part, including the information relating to the educational achievement of handicapped children participating in programs carried out under this part.

## XI. Records (§121.223)

___________________________(LEA) assures that it will provide for keeping such records, and for affording such access to such records, as the Central Office may find necessary to assure the correctness and verification of such information furnished under this application.

## XII. Public Participation (§121.234)

______________________________(LEA) assures that it will provide for making the application and all pertinent documents related such application available to parents, guardians, and other memebers of the general public and provide that all program evaluations and reports shall be public information except that no personally identifiable information shall be given.

## XIII. Individual Education Program (§121.235)

It shall be the policy of ____________________(LEA) that individualized education programs for all children receiving special educational services be established and maintained. The development, review, and revision of the IEP's must include:

1. IEP's must be developed within thirty days of the determination that the child is handicapped and needs special education and related services and revised at least annually.

2. ________________________(LEA) is responsible for initiating and conducting IEP conferences.

3. Parents must be afforded an opportunity to participate in the IEP conference at a mutually agreed upon time and place. Procedures for providing sufficient documentation of attempts to arrange a mutual setting will be included to allow the conference to occur without parents. Provisions for interpreters or other facilitators for parental participation in the case of a communication barrier on the part of the parent will be documented.

4. IEP conferences must include but not be limited to:

    a. A representative of the local education agency (principal or his designee);
    b. The child's teacher(s);
    c. One or both parents;
    d. Child (when appropriate); and
    e. A member of the evaluation team or a person knowledgeable about the assessment data (for a child evaluated the first time).

5. The IEP must include:

    a. The child's present level of educational performance.
    b. Annual goals describing anticipated behavior to be achieved and based on the child's unique needs.
    c. Short term instructional objectives based on the annual goals.
    d. Special education services and instructional materials to be provided including special education and related services required to meet the child's unique needs.
    e. The extent to which the child will participate in regular education programs.
    f. Projected date for the initiation and anticipated duration of service.
    g. Appropriate objective criteria, evaluation procedures and schedules for determining, on at least an annual basis, whether the instructional objectives are being achieved.
    h. List of individual responsible for implementing the IEP.
    i. The type of physical education to be provided to the child.
    j. A statement as to whether all services recommended for the child are being provided, and an explanation if the services are not being provided.

6. Policies established for the development, maintenance and evaluation of individualized education programs for children placed in private school by the LEA's must include:

   a. Provisions for the presence of a teacher or private school representative at IEP conferences or alternative for physical presence.
   b. Provisions for ____________________________(LEA) to have responsibility for the development of the individualized education program with option to delegate to the private school.

## XIV. Local Policies Consistent with P.L. 94-142 (§121.236)

________________________________(LEA) assures that all policies and programs established and administered by such shall be consistent with the BIA Annual Program Plan and the Comprehensive Regulations for Special Education.

## XV. Procedural Safeguards (§121.237)

The following statements outline the policy of ____________________(LEA) on procedural safeguards for assuring due process procedures for parents and children under P.L. 94-142:

1. Written notice must be given to the parents of a handicapped child before an evaluation is conducted.

   a. Proposing to initiate or change identifiction, evaluation, or educational placement of the child.or the free appropriate public education provided to the child.

   b. Refusing to initiate or change the identification, evaluation or educational placement of the child or the free appropriate public education provided to the child. If the parent refuses to consent, the LEA may request a hearing for purposes of determining the need for evaluation of the child.

2. The notice of evaluation must contain:

   a. A full explanation of all the procedural safeguards available to the parents.
   b. A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.
   c. A description of each evaluation procedure, test, record, or report the LEA uses as a basis for the proposal or refusal.

3. The notice of evaluation must be:

   a. Written in language understandable to the general public.
   b. Provided in the native language of the parent or other mode of communication used by the parent. If the mode of communication is not a written language, the LEA will insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication.
(2) That the parent understands the content of the notice.
(3) That there is written evidence that the requirements in (1) and (2) above have been met. Documentation of this will be available in written form.

4. The parents of a handicapped child mustl be afforded an opportunity to examine all relevant records with respect to:

(a) The identification, evaluation, and educational placement of the child.
(b) The provision of a free appropriate public education to the child.

5. The LEA must inform the parents of a handicapped child that they have a right to obtain an independent educational evaluation of the child subject to the following criteria:

a. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA, however, the LEA may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

b. If a parent obtains an independent educational evaluation at his or her own expense, the results of the evaluation :

(1) Must be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the child.
(2) May be represented by either party as evidence at a hearing regarding that child.

c. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

d. Whenever the LEA pays for an independent educational evaluation, the criteria, including the location of the evaluation and qualifications of the examiner, must the same as the criteria used when the LEA initiates an evaluation.

6. The LEA must insure that not later than 45 days after receipt of a request for a hearing a final decision will be reached.

7. The impartial hearing officer must not be an employee of the BIA or LEA or involved in the education or care of the child.

The hearing officer will not be a person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

The hearing officer will not be considered an employee of the BIA or LEA solely because he or she is paid by the BIA or LEA to serve as a hearing officer.

8. Any party at a hearing will have the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children.

   May present evidence and confront, cross-examine, and compel the attendance of witnesses.

   May obtain a written or electronic verbatim record of the hearing.

9. A decision made in a hearing or review is final unless a party in the hearing appeals the decision in an administrative appeal or civil action. Civil action can only be requested following the use of an LEA hearing and review.

# PROGRAM/SERVICE DESCRIPTION

Explain in narrative form each special education program or service provided to/for the handicapped students of the LEA: (attach extra sheets as needed)

## CHILD FIND DOCUMENTATION

List all agencies, organizations, etc. contacted to participate in the Child Find Activities and a brief description of their involvement:

| Name of Agency | Activities |
|---|---|
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Describe below the means (e.g., type of media) used to inform the public of the Child Find process. Attach copies if applicable.

| Means (Type of Media) | Location/Area | Date(s) |
|---|---|---|
| | | |
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## HEARING OFFICERS

List each person serving as a hearing officer for the LEA. LEA's should be identified as to whether it is a school, Agency, or Area Office.

| Name | Occupation | State | Trained Yes | Trained No |
|---|---|---|---|---|
| | | | | |
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## DIAGNOSTIC/EVALUATION SERVICES

All staff, organizations, etc. providing diagnostic/evaluation services to the school(s) are to be identified. List each person separately by Title, Employment Source (i.e., employed by school, agency through which the service is contracted, etc.), and Funding Source.

| Title | Employment Source | Funding Source |
|---|---|---|
| | | |
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## TRANSPORTATION UNITS

**JUSTIFICATIONS MUST BE ATTACHED TO THIS PAGE**

|  | Number |  | Vehicle | Funding |  |
|---|---|---|---|---|---|
| Vehicle Type | Present | Needed | Source | Source | Amount |
| CAR |  |  |  |  |  |
| STATION WAGON |  |  |  |  |  |
| 4 WHEEL DRIVE |  |  |  |  |  |
| VANS |  |  |  |  |  |
| MINI-BUS |  |  |  |  |  |
| BUSES |  |  |  |  |  |
| OTHER (SPECIFY) |  |  |  |  |  |
| TOTAL |  |  |  |  |  |

## IN-SERVICE TRAINING*

Attach to this page a narrative of the in-service training program developed for Regular Classroom Teachers, Administrators, Special Education Staff, Dormitory, and other Non-Instructional Staff with dates and topics to be covered.

| Type of Personnel | # of Persons | Training Areas | Training Source | Cost | Fund Source | Dates | Type of Evaluation |
|---|---|---|---|---|---|---|---|
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*Include Formal Staff Training but identify such by "F" -- Formal Staff Training must be on OF 170's and included as part of the employees training program.

IF CONFERENCES ARE INCLUDED IN THE IN-SERVICE CHART, IDENTIFY THE CONFERENCE TO BE ATTENDED, THE DATE AND LOCATION, AND INCLUDE A SHORT JUSTIFICATION.

## EQUIPMENT LIST

List all equipment being requested by title, cost per item, and fund source.

ATTACH A JUSTIFICATION FOR ALL EQUIPMENT REQUESTED FROM PART B FUNDS

| Item | Fund Source/ Element- Component | No. of Units | Cost Per Unit | Total Cost |
|---|---|---|---|---|
| | | | | |
| Freight | | | | |
| | | | TOTAL COSTS | |

## SUPPLIES/MATERIALS

List all supplies and materials being requested by item, cost per unit, total cost and fund source.

| Item | Fund Source/ Element and Component | No. of Units | Cost Per Unit | Total Costs |
|---|---|---|---|---|
| | | | | |
| Freight | | | | |
| | | | TOTAL COSTS | |

## STAFFING [illegible]T

List all staff providing services to handicapped students regardless of fund source. For personnel NOT employed under 3100 or Part B, complete only columns #1, 5, and 9. (Attach additonal pages if necessary)

| 1 POSITION TITLE | 2 RATING/ GS GRADE* | 3 # PAY PERIODS | | 4 COST PER P.P. | 5 ELEM./ COMP. | 6 TOTAL COST | | 7 HIRED | 8 NEEDED | 9 OTHER FUND SOURCE | 10 STATE CERTIFIED Yes or No |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 3100 | 142 | | | 3100 | 142 | | | | |
| | | | | | | | | | | | |
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* Indicate by "C" if Contracted Service -- give the equivalent rating if the position is in a contract school.

COOPERATIVE SCHOOLS must complete Column #9.

## PART B, P.L. 94-142
## TENTATIVE PLANNING ALLOCATION
## SCHOOL YEAR 1980-81

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Instructions: List by category the number of handicapped students counted during the Spring ISEP count weeks, UNLESS the number of children presently enrolled is considerably less than the enrollment during that time. The lesser amount should be used in those instances. The total number of students per category are multiplied by the dollar amount given to equal the tentative allocations. In order to be counted, students must be classified as handicapped according to the P.L. 94-142 and BIA special education regulations and have IEP's. Students are to be counted only once—this is an unduplicated count. Students are to be counted only in their primary handicapping condition.

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| FULL TIME | NO. | | AMOUNT | TOTALS |
|---|---|---|---|---|
| Deaf | ______ | x | $ 1,000 | $________ |
| Blind | ______ | x | 1,000 | $________ |
| Severely Multihandicapped | ______ | x | 1,000 | $________ |
| Severely and Profoundly Retarded | ______ | x | 1,000 | $________ |
| Severely Emotionally Disturbed | ______ | x | 750 | $________ |
| Specific Learning Disabled | ______ | x | 750 | $________ |
| Mentally Retarded | ______ | x | 750 | $________ |
| PART TIME | | | | |
| Emotionally Disturbed | ______ | x | 500 | $________ |
| Specific Learning Disabled | ______ | x | 500 | $________ |
| Mentally Retarded | ______ | x | 500 | $________ |
| Multihandicapped | ______ | x | 500 | $________ |
| Hard of Hearing | ______ | x | 500 | $________ |
| Visually Handicapped | ______ | x | 500 | $________ |
| Orthopedically Impaired | ______ | x | 500 | $________ |
| Other Health Impaired | ______ | x | 500 | $________ |
| Speech Impaired | ______ | x | 500 | $________ |
| Deaf | ______ | x | 500 | $________ |
| Blind | ______ | x | 500 | $________ |
| TOTALS | ______ | | | $________ |

BUDGET INFORMATION — SPECIAL EDUCATION Location:

(For a description of the components refer to the Financial Handbook)

| 1 Component | 2 Salary | 3 ** Travel/ Trans. | 4 Supplies/ Materials | 5 Equip. | 6 Contracts** | 7 Other** | 8 Totals 142 |
|---|---|---|---|---|---|---|---|
| 10 Inven./Res. | | | | | | | |
| 12 Child Find | | | | | | | |
| 13 Assessment | | | | | | | |
| 14 Audit | | | | | | | |
| 16 Dissem. | | | | | | | |
| 17 Parent. Inv. | | | | | | | |
| 18 Due Proc. H. | | | | | | | |
| 19 Monitoring | | | | | | | |
| 21 Mat. Develop | | | | | | | |
| 22 Curric. Dev. | | | | | | | |
| 23 Trans./ Attendance | | | | | | | |
| 25 In-Service | | | | | | | |
| 54 Media Serv. | | | | | | | |
| SUBTOTALS | | | | | | | |

**TRAVEL/TRANSPORTATION, CONTRACTS & OTHER COSTS MUST HAVE A DESCRIPTION OF THE ITEM(S) ATTACHED TO THIS PAGE.

COLUMNS 2, 3, 4 and 5 MUST ALSO HAVE THE APPLICABLE CHARTS COMPLETED IN THIS APPLICATION.

INFORMATION — SPECIAL EDUCATION Location:

| 1 Component | 2 Salary | 3 ** Travel/ Trans. | 4 Supplies/ Materials | 5 Equip. | 6 Contracts** | 7 Other** | 8 Totals 142 |
|---|---|---|---|---|---|---|---|
| 61 Consultant | | | | | | | |
| 62 Itinerant | | | | | | | |
| 63 Resource Rm | | | | | | | |
| 64 Self-Contain | | | | | | | |
| 65 Special Day School | | | | | | | |
| 66 Institution. | | | | | | | |
| 67 Hosp./ Homebound | | | | | | | |
| 77 Stud. Activ. | | | | | | | |
| 79 Home Living | | | | | | | |
| 80 Trans/ Activities | | | | | | | |
| 83 Pupil Pers. Serv. | | | | | | | |
| 90 General Operations | | | | | | | |
| 92 Contract Monitoring | | | | | | | |
| 95 Formal Staff Trng. | | | | | | | |
| TOTALS | | | | | | | |

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** TRAVEL/TRANSPORTATION, CONTRACTS & OTHER COSTS MUST HAVE A DESCRIPTION OF THE ITEM(S) ATTACHED TO THIS PAGE.

COLUMNS 2, 3, 4 and 5 MUST ALSO HAVE THE APPLICABLE CHARTS COMPLETED IN THIS APPLICATION.

BUDGET INFORMATION — SPECIAL EDUCATION Location:

Component/Element 1162

| 1<br>Work Order | 2<br>Salary | 3 **<br>Travel/<br>Trans. | 4<br>Supplies/<br>Materials | 5<br>Equip. | 6<br>Contracts** | 7<br>Other** | 8<br>Totals<br>3100 |
|---|---|---|---|---|---|---|---|
| E10<br>Inven./Res. | | | | | | | |
| E12<br>Child Find | | | | | | | |
| E13<br>Assessment | | | | | | | |
| E14<br>Audit | | | | | | | |
| E16<br>Dissem. | | | | | | | |
| E17<br>Parent. Inv. | | | | | | | |
| E18<br>Due Proc. H. | | | | | | | |
| E19<br>Monitoring | | | | | | | |
| E21<br>Mat. Develop | | | | | | | |
| E22<br>Curric. Dev. | | | | | | | |
| E23 Trans./<br>Attendance | | | | | | | |
| E25<br>In-Service | | | | | | | |
| E54<br>Media Serv. | | | | | | | |
| SUBTOTALS | | | | | | | |

**TRAVEL/TRANSPORTATION, CONTRACTS & OTHER COSTS MUST HAVE A DESCRIPTION OF THE ITEM(S) ATTACHED TO THIS PAGE.

COLUMNS 2, 3, 4 and 5 MUST ALSO HAVE THE APPLICABLE CHARTS COMPLETED IN THIS APPLICATION.

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## BUDGET INFORMATION — SPECIAL EDUCATION

Location:

1162

| 1<br>Work Order | 2<br>Salary | 3 **<br>Travel/ Trans. | 4<br>Supplies/ Materials | 5<br>Equip. | 6<br>Contracts** | 7<br>Other** | 8<br>Totals 3100 |
|---|---|---|---|---|---|---|---|
| E61 Consultant | | | | | | | |
| E62 Itinerant | | | | | | | |
| E63 Resource Rm | | | | | | | |
| E64 Self-Contain | | | | | | | |
| E65 Special Day School | | | | | | | |
| E66 Institution. | | | | | | | |
| E67 Hosp./ Homebound | | | | | | | |
| E77 Stud. Activ. | | | | | | | |
| E79 Home Living | | | | | | | |
| E80 Trans/ Activities | | | | | | | |
| E83 Pupil Pers. Serv. | | | | | | | |
| E90 General Operations | | | | | | | |
| E92 Contract Monitoring | | | | | | | |
| E95 Formal Staff Trng. | | | | | | | |
| TOTALS | | | | | | | |

** TRAVEL/TRANSPORTATION, CONTRACTS & OTHER COSTS MUST HAVE A DESCRIPTION OF THE ITEM(S) ATTACHED TO THIS PAGE.

COLUMNS 2, 3, 4 and 5 MUST ALSO HAVE THE APPLICABLE CHARTS COMPLETED IN THIS APPLICATION.

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# APPENDIX F. PROPOSED RULES AND REGULATIONS FOR PL 95-561

BUREAU OF INDIAN AFFAIRS

Office of Indian Education Programs

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# Comprehensive Regulations Governing Special Education Programs

## Title 25 Code of Federal Regulations

## Part 31k

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FINAL DRAFT

March 12, 1980

[25 CFR Part 31k]

## Comprehensive Special Education Program
March , 1980

**AGENCY:** Bureau of Indian Affairs,
U.S. Department of the Interior

**ACTION:** Proposed Rule.

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SUMMARY: Notice is hereby given that it is proposed to add a new Part 31k to Subchapter E, Chapter 1 of Title 25 of the Code of Federal Regulations. These proposed rules are to implement, in part, section 1121 of Title XI of the Education Amendments of 1978 (92 Stat. 2143, 2320 and 2321, P.L. 95-561) by establishing standards for the provision of special education and related services to Indian children in schools operated by or under the authority of the Bureau of Indian Affairs.

**DATES:** Comments must be received on or before April , 1980.

**ADDRESS:** Mail written comments to: U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, Attention: Earl Barlow, Director, 18th and C Streets, N.W., Room 3510, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Charles Cordova, Chief, Division of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, 18th and C Streets, N.W., Room 3520, Washington, D.C. 20240, (202) 343-5517.

**SUPPLEMENTARY INFORMATION:** The authority for issuing these rules in sections 1121 and 1123 of the Education Amendments of 1978 (supra). This notice is published in exercise of the authority delegated by the Secretary of Interior to the Assistant Secretary for Indian Affairs by 209 DM8.

The proposed rules will govern the operation of special education programs for handicapped children enrolled or eligible for enrollment in BIA operated and/or funded schools. These proposed rules thus apply to all schools operated by or under the authority of the Department of the Interior that receive financial assistance from the U.S. Department of Health, Education and Welfare, generally under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706

and its implementing regulation (45 CFR 84) and under Part B of the Education of the Handicapped Act, as amended, 20 U.S.C. 1411-1420 and its implementing regulations (45 CFR 100b, 121a). Accordingly, this regulation represents an effort to combine in a single document all of the Federal requirements directly addressed to the identification of and provision of educational services to handicapped children in such schools. The regulation is intended to establish a single comprehensive set of standards for ensuring that all handicapped children enrolled in BIA operated and/or funded schools are provided a free appropriate public education in the least restrictive educational environment appropriate to their needs, consistent with their rights and related procedural safeguards.

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It has been determined that these proposed regulations are not a major Federal action within the scope of the National Environmental Policy Act of 1969, 45 U.S.C. 4332 (2) (c).

The Department of Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR, Part 14.

The primary author of this document was Martin H. Gerry, M. H. Gerry & Company pursuant to Department of Interior Contract No. G00C14203184 who may be contacted at (202) 223-0570.

It is proposed to add a new Part 31K to Subchapter E, Chapter 1 of Title 25 of the Code of Federal Regulations to read as follows:

EFFECTIVE DATE: June 1, 1980

# PART 31k - SPECIAL EDUCATION

## Subpart A - General

31k.1 General Responsibility.

31k.2 Jurisdiction.

31k.3 Enrollment in Early Childhood Programs.

31k.4 Children of Ages Eighteen Through Twenty-One.

31k.5 Equal Educational Opportunity.

31k.6 Definitions.

31k.7-.10 Reserved.

## Subpart B - Identification and Evaluation of Handicapped Children

31k.11 Child Find.

31k.12 Child Find - Elements.

31k.13 Register of Children.

31k.14 General Entry Screening.

31k.15 Waiver of General Entry Screening.

31k.16 Report of General Entry Screening.

31k.17 Child Identification.

31k.18 Screening Personnel.

31k.19 Proposing an Individual Evaluation.

31k.20 Evaluation Procedures.

31k.21 Individual Evaluation Objectives.

31k.22 Formation of Multi-Disciplinary Evaluation Teams.

31k.23 Composition of Multi-Disciplinary Evaluation Teams.

31k.24 Multi-Disciplinary Evaluation Team Procedures.

31k.25 Content of Individual Evaluation.
31k.26 Evaluation Instruments.
31k.27 Test Administration.
31k.28 Location of Evaluation.
31k.29 Emergency Evaluation and Placement.
31k.30 Independent Educational Evaluation.

## Subpart C - Provision of Special Education and Related Services

31k.31 Free, Appropriate Public Education.
31k.32 Individualized Education Program.
31k.33 Content of IEP.
31k.34 IEP Development.
31k.35 Placement Recommendation in the IEP.
31k.36 Approval of IEP and Placement Recommendation.
31k.37 IEP Implementation and Placement.
31k.38 IEP Revision, Review of Placement.
31k.39 Reevaluation.
31k.40 Extended School Year Services.
31k.41 Outcome Goals.
31k.42 Related Services.
31k.43 Non-Academic and Extracurricular Services.
31k.44 Physical Education and Athletics.
31k.45 Discipline.
31k.46 Geographic Accessibility.
31k.47 Architectural Barriers and Program Accessibility.
31k.48-.50 Reserved.

## Subpart D - Procedural Safeguards

31k.51 Full and Effective Notice.
31k.52 Parental Approval.
31k.53 Communications to Parents and Children.
31k.54 Rights of Handicapped Children.
31k.55 Confidentiality of Information.
31k.56 Efforts to Ensure Parental Participation.
31k.57 Surrogate Parents.
31k.58 Conciliation.
31k.59 Initiation of Hearings.
31k.60 Hearing Procedures.
31k.61 Hearing Officers.
31k.62-.64 Reserved.

## Subpart E - Personnel

31k.65 Appointment of Special Education Coordinator.
31k.66 In-Service Training.
31k.67 Certification of Staff.
31k.68 Grievance Procedures.
31k.69 Reserved.

## Subpart F - School Administration

31k.70 Assurance of Compliance.
31k.71 Self-Evaluation.
31k.72 Comparability of Facilities.

31k.73 Non-Discrimination in Administration of Dormitories and Boarding Schools.
31k.74 Comprehensive System of Personnel Development.

## Subpart G - Responsibilities of the Division

31k.75 The Division.
31k.76 The Director.
31k.77 Monitoring and Complaint Investigation.
31k.78 Review of Challenge of Hearing Officer.
31k.79 Use of Available Funds.
31k.80 Children in the Care of the Division of Social Services.
31k.81 Cooperative Programs.
31k.82 Non-Compliance.
31k.83 Vocational Education Coordinator.
31k.84 Further Guidelines and Directives.

## Subpart A - General

### 31k.1 General Responsibility.

(a) Schools are responsible for providing a free appropriate public education to all handicapped Indian children who are enrolled in a school operated by or under the Bureau of Indian Affairs or who are eligible for, and whose parents make application for enrollment in, a school operated and/or funded by the Bureau of Indian Affairs, and whose third birthday has occurred but whose twenty-second birthday has not occurred. Children whose third birthday occurs after the beginning of a regular school year but before the end of the first full week of January or whose twenty-second birthday occurs during the course of the regular school year shall be regarded as eligible children for the entire school year.

(b) The responsibility to ensure the provision of a free appropriate public education continues unabated regardless of whether the handicapped child is provided special education and related services:

(1) By a school directly;

(2) Through a contract entered into by the school with a public or private agency;

(3) By an educational cooperative of which the school is a member;

(4) By an approved public or non-public school program (following placement or referral);

until a child successfully completes a secondary school program, voluntarily withdraws or attains the age of twenty-two years.

### 31k.2 Jurisdiction.

A handicapped Indian child is "within the jurisdiction of a school" if the child is either currently enrolled in that school or, if non-handicapped, would be eligible for enrollment consistent with the provisions of Section 31.1 of Part 31 of this Title.

## 31k.3 Enrollment in Early Childhood Programs.

The requirements of these regulations shall apply to children three and four years of age insofar as the requirements may be adapted to reflect the fact that such children are not in a public school.

## 31k.4 Children of Ages Eighteen Through Twenty-One.

A child of ages eighteen through twenty-one shall be entitled to all of the rights given to children and parents by this Part.

## 31k.5 Equal Educational Opportunity.

Each school must provide full educational opportunity to all handicapped children, aged three through twenty-one no later than August 1, 1980.

## 31k.6 Definitions.

(a) "Agency" means an organizational unit of the Bureau which provides direct services to the governing body or bodies of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools, cooperative schools, and Tribally-operated contract schools located in the area for which the Director has not designated an Area.

(b) "Agency Superintentent for Education" means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director

(c) "Approved public or non-public school" means either a public school operated by a local educational agency, intermediate educational unit or other public agency (as those terms are defined at 45 CFR 121a.7, 8, 11) of a state which receives funds under Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411-1420) pursuant to a current annual program plan approved by the Commissioner of Education (pursuant to 45 CFR 121a.113) or a non-public school located in such state determined by the State educational agency to be in full compliance with all applicable state and Federal special education requirements.

(d) "Area Director for Education" means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office and who reports to the Director.

(e) "Assistant Secretary" means the Assistant Secretary of Indian Affairs, Department of the Interior, or his/her designee.

(f) "Blind" means the possession of a central visual acuity of 20/200 or less in the better eye with correcting glasses, or a peripheral field of vision so contracted that its widest diameter is less than 20%

(g) "Boarding school" means a Bureau school offering residential care and support services as well as an academic program.

(h) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(i) "Child identification" means the identification, location, and individual evaluation of handicapped children.

(j) "Counseling services" means services provided by qualified social workers (with training as counselors), psychologists, guidance counselors, or other qualified personnel.

(k) "Director" means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

(l) "The Division" means the Division of Exceptional Education, Office of Indian Education Programs of the Bureau of Indian Affairs, Department of the Interior.

(m) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and which adversely affects a child's educational performance.

(n) "Deaf-blind" means concommitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and education problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(o) "EHA" means Part B of the Education of the Handicapped Act as amended by the Education for All Handicapped Children Act of 1975 (P.L. 94-142), 20 U.S.C. 1411-1420, and the regulations issued by the U.S. Department of Health, Education and Welfare at 45 CFR 100b; 121a.

(p) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(1) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(3) Inappropriate types of behavior or feelings under normal circumstances;

(4) A general pervasive mood of unhappiness or depression; or

(5) A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes children who are autistic or schizophrenic. The term does not include children who are socially maladjuste unless it is determined that they are emotionally disturbed.

(q) "Full and effective notice" is defined in Section 31k.51 of this Part.

(r) "Handicapped child" means a child evaluated in accordance with the requirements of this Part who is determined to be emotionally disturbed, learning disabled, mentally retarded, hard of hearing, deaf, deaf-blind, speech impaired, severe language disordered, visually impaired, multi-handicapped, orthopedically impaired, hospital/homebound or otherwise health impaired or handicapped, and who requires special education and related services.

(s) "Hospital or homebound" means any situation in which a physical or mental impairment or illness, or the treatment thereof, precludes the movement of an individual from a hospital or home environment to the general education environment.

(t) "IEP" means the written individualized education program for a handicapped child which sets forth the child's present level of education performance, determines annual goals and short term instruction objectives, and describes the specific special education and related services to be provided to the child in the least restrictive environment consistent with all of the requirements of Section 31k.32-.37 of this Part.

(u) "Individual or group IQ test" means any group or individual test, device, or measure which purports, or is used, to assess a child's current or future mental abilities; capacity; intellectual functioning; retarded intellectual development or aptitude, but does not include achievement tests or adaptive behavior scales.

(v) "Learning disabled" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, or mental retardation, or emotional disturbance, or of environmental, cultural, or economic disadvantage.

(w) "Least restrictive environment" means the educational placement of a handicapped child required by Section 31k.35 of this Part.

(x) "Major body system" means any of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive, genito-urinary; hemic and lymphatic; skin; and endocrine.

(y) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(z) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the development period, which adversely affects a child's educational performance.

(aa) "Multi-handicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc. but not including speech impaired), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(bb) "Native language" when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language (including sign language and braille notation) normally used by the parents of the child.

(cc) "Orthopedically impaired" means a severe orthopedic handicap which adversely affects a child's educational performance. The term includes handicaps caused by congenital anomaly (e.g., clubfoot, absence of member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and handicaps from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(dd) "Otherwise health impaired" means limited strength, vitality or alertness due to chronic or acute health problems or any physical or mental impairment to a major body system (other than those defined elsewhere in Section 31k.6) which substantially limits one or more major life activities and adversely affects a child's educational performance.

(ee) "Parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent provided that the rights and responsibilities of a parent established by this Part shall be exercised directly by a handicapped child who attains the age of eighteen years unless such child has been determined to be in continuing minority by a court of the state or tribal court.

(ff) "Parental approval" is fully informed parental consent as defined in Section 31k.52 of this Part.

(gg) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(hh) "Partially seeing" means possessing a central visual acuity no greater than 20/70 in the better eye with correcting glasses.

(ii) "Physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance and individual and group games and sports. The term includes special physical education, adapted physical education, movement education and motor development.

(jj) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(kk) "School" means an educational or residential center operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of a local school supervisor. A school may be located on more than one physical site. The term "school", unless otherwise specified, is meant to encompass day schools, boarding schools, previously private schools, cooperative schools, and contract schools as those terms are commonly used.

(ll) "Section 504" means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706 and the Regulation issued by the U.S. Department of Health, Education and Welfare at 45 CFR 84.

(mm) "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(nn) "Special education coordinator" means the full-time employee of an area/agency designated for ensuring that all requirements of this Part are complied with schools within the jurisdiction of the area/agency.

(oo) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(pp) "Supervisor" or "school supervisor" means the individual in the position of ultimate authority at any school.

(qq) "Tribally operated contract school" means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(rr) "Visually impaired" means a visual handicap which, even with correction, adversely affects a child's educational performance and includes both partially seeing and blind children.

(ss) "Vocational education" means organized educational programs which are directly related to the preparations of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

31k.7-.10 Reserved.

## Subpart B - Identification and Evaluation of Handicapped Children

### 31k.11 Child Find.

Each agency must continually seek out, identify and locate every child within the jurisdiction of its schools (regardless of current residence or enrollment) between the ages of birth and twenty-two years who is suspected of being a handicapped child in need of special education and related services. Off-reservation boarding schools shall confine child find activities to the in-school identification described in 31k.12(c) of this part. A formal child find effort must be conducted at least once each school year and must include procedures to identify children:

(a) Ernolled in a regular education program operated by the schools of the agency;

(b) Enrolled in a public or non-public pre-school or day-care program on or near the reservation;

(c) Currently out-of-school, including dropouts and excluding children who have graduated or otherwise successfully completed programs.

### 31k.12 Child Find - Elements.

Each agency shall, at a minimum, ensure that all school singly, or in concert with another school:

(a) Conduct a formal community survey (by telephone, mail, door-to-door or through any other effective method(s)) of children of all ages to identify children who may be in need of special education services.

(b) Regularly present or distribute information at tribal government or agency meetings, tribal fairs, chapter/district meetings, etc.

(c) Establish a system of in-school identification by which each local supervisor refers for an individual evaluation children whose academic performance, attendance, or other behavior indicates the possibility of a physical or mental impairment.

(d) Establish a procedure by which child identification data is regularly collected from the Indian Health Service, local Headstart programs, day care facilities, group homes, local public and non-public schools, the state education agency (of the state in which the school is located), tribal agencies and organizations and any other appropriate education, health, welfare or social service organization in the community served by the school. A formal procedure for the exchange of information between the State Organizational Unit conducting the Early Periodic Screening, Diagnosis and Treatment Program, (mandated by Title XIX of the Social Security Act) for the state in which the school is located and the Agency in which the school is located shall be established within 180 days from the effective date of this Part.

(e) Publish public information articles and programs in local media, including announcements of times, dates and places of free orientation workshops and free screening.

(f) Initiate annual community-wide communication to all parents to describe the special education which is available and to accept referrals of any child for evaluation. Such communication shall emphasize the availability of programs and services for school age children.

## 31k.13 Register of Children.

Each school shall maintain an ever-current register of handicapped children within its jurisdiction in need of special education, listing the following information for each child:

(a) Name of child;
(b) Address and telephone number;
(c) Date of birth;
(d) Full name of parent(s);
(e) Date referral received;
(f) Date(s) of parental approval;
(g) Date of acceptance or rejection of IEP;
(h) Beginning date of special education;
(i) Name of school or other place where special education is delivered;
(j) Handicapped condition.

### 31k.14 General Entry Screening.

Each school shall participate in a screening program for all new children who enroll in the school. Such screening shall be conducted by the Agency serving the school in order to identify those children who should be referred for a full individual evaluation. The general entry level screening shall consist of the following elements appropriately adapted for use with children of that age:

(a) A solicitation from parents, through interviews, questionnaires, or other formal and informal techniques, of information, including the age at which developmental milestones were attained, existence of possible need for special education, results of previous assessments and evaluations, history of placement in special education programs, history of treatment received for disabilities and a current description of the child and other medical history.

(b) An appropriate vision screening.

(c) An appropriate hearing screening.

(d) A screening, separately and in integration, of the child's visual, auditory and motor functioning in practical tasks and activities.

(e) A screening of the child's language functioning.

### 31k.15 Waiver of General Entry Screening.

The general entry screening may be waived if the parents arrange at their expense for the results of an equivalent screening as determined by the school or if an equivalent screening in the opinion of the school has been completed during the preceding six months and has been made available to the school.

## 31k.16 Report of General Entry Screening.

The school shall inform the parents of the child of the results of the general entry screening and of the opportunity for the parent to discuss the results with the appropriate school personnel. The screening report shall note any difficulties which were observed during the screening in the child's cognitive, social, or emotional functioning and the child's parents shall be notified at once of any immediate illness or danger to the child discovered by the screening process, and of the procedures the school will follow to insure the child's safety. Where the results of the general entry screening indicate a reasonable likelihood that a child has need of special education, the results of the screening shall be fully discussed with the child's parents and current or prospective teacher. If the child is involved in an early childhood program at the time of the screening, the results shall be discussed fully with the child's early childhood teacher(s).

## 31k.17 Child Identification.

Each school must provide full and effective notice to the parent(s) of each child identified and located within ten days after the identification and location has been completed. Any child identified as part of the Child Find Effort, the General Entry Screening Program or as a result of prior enrollment in a special education program is an "identified child" in need of special education services (or is suspected of being in need of special education services) for purposes of this Part.

## 31k.18 Screening Personnel.

The school shall utilize screening personnel who are certified, licensed, approved or board-registered in a speciality area qualifying them to do the specific screening which is being performed.

## 31k.19 Proposing an Individual Evaluation.

(a) Within five days, an individual evaluation must be proposed for parental approval for any child who continues to be suspected of being a handicapped child and in need of special education and related services.

(b) An individual evaluation shall also be conducted if a parent successfully challenges through a due process hearing a decision made by a school to discontinue further child identification activities (i.e., not propose an individual evaluation) pursuant to this Part.

## 31k.20 Evaluation Procedures.

(a) An individual evaluation must be completed no later than thirty days from the date it is approved by the parent, or if:

(1) A significant change in educational placement of a child is proposed by either the school, or the parent, or both;

(2) A child is currently enrolled in a special education program whose last individual evaluation occurred three or more years ago;

(3) For children enrolled in a special education program, where conditions warrant an individual evaluation, or it is requested in writing by the child's teacher, the school supervisor or by the Special Education Coordinator;

(4) A parent successfully challenges a decision by a school to deny an individual evaluation;

(b) In each instance all reasonable efforts must be made by the school to obtain parental approval. If, after twenty days from the date the parent is notified of the proposed evaluation, the parent has denied or failed to give approval for the individual evaluation, the school shall either:

(1) Determine that it erred in proposing the individual evaluation; or

(2) Commence the override procedure set forth in Section 31k.59 of this Part.

(c) Each school shall insure that the parents of each child referred for an evaluation, as well as the child, who is at least twelve (as a matter of right) or who is younger than twelve when appropriate, have an opportunity to meet with the evaluation personnel of the Agency prior to the date of the evaluation to discuss the reasons for the referral and the nature of the evaluation, including, with parental approval, the possibility of a home visit.

## 31k.21 Individual Evaluation Objectives.

The objectives of an individual evaluation are to:

(a) Determine whether a child possesses an impairment or condition which would enable the child to be classified as handicapped;

(b) Diagnose and evaluate the nature and extent of the effect of such impairment or condition on the educational performance of the child;

(c) Assess the need for special education and related services.

## 31k.22 Formation of Multi-Disciplinary Evaluation Teams.

(a) The School Supervisor, or designee, will be responsible for all overall conduct of the individual evaluation and shall collect and review all pertinent information regarding the child to be evaluated.

(b) The Special Education Coordinator shall select a multi-disciplinary evaluation team for the conduct of the evaluation.

## 31k.23 Composition of Multi-Disciplinary Evaluation Teams.

The multi-disciplinary evaluation team shall be composed of certified persons appropriate to a complete assessment of the suspected disability. In all cases the classroom teacher (or other instructional staff member) familiar with the child and a person knowledgeable with respect to the suspected disability must be included on the team.

## 31k.24 Multi-Disciplinary Evaluation Team Procedures.

(a) Each individual evaluation must be completed, with full attention to its comprehensiveness and thoroughness, within thirty days of its initiation. An extension of time of no more than thirty additional days may be approved in writing by the Special Education Coordinator after a showing by the school that unusual circumstances exist preventing completion of the individual evaluation in the specified time. No more than one extension may be approved in connection with a single individual evaluation unless approved in writing by the Director.

(b) The comprehensive assessment must reflect a compilation of information drawn from different assessment sources. The depth of the assessment in each area will vary based on the initial review of screening information conducted by the Special Education Coordinator. The weight given to each source area must be fully documented and a formal resolution must be made of any discrepancies between formal test results and the child's customary behavior and daily activities, and of any discrepancies among test results.

(c) The Special Education Coordinator is responsible for ensuring that full and complete records of information collected or generated in connection with an individual evaluation are maintained. A report setting forth a full written explanation of the findings and the recommendations made by the multi-disciplinary evaluation team is prepared. The report must include:

(1) a description of the child's present level of functioning;

(2) a description of the needs of the child in rank order of importance;

(3) a recommendation of the types of services which should be provided for each listed need;

(4) a written summary of the procedures employed, the results, and the diagnostic impression;

(5) a detailed definition in educationally relevant and common terms, the child's needs, any prescriptive elements needed to meet the child's needs;

(6) a proposed date for the review of the child's progress prior to the annual review, if such assessment so indicates; and

(7) criteria by which, at that time, the effectiveness of the child's program may be determined.

(d) Each member of the multi-disciplinary evaluation team shall certify in writing whether the report prepared by the team reflects his or her conclusions, and if not, shall submit a separate statement presenting his or her conclusions. The report (and any required statements) must be prepared as promptly as possible following the completion of the individual evaluation and in no event later than ten days after completion.

(e) Members of the multi-disciplinary evaluation teams must be responsible for all aspects of the individual evaluation including the selection, administration and interpretation of evaluation materials; the collection of all appropriate social and cultural background and adaptive behavior information related to each evaluation; and the confidentiality of information collected during the individual evaluation.

(f) The multi-disciplinary evaluation team may use and decide to rely in whole or in part on information collected in another public school attended by the child during the twelve months which preceded the initiation of the individual evaluation.

## 31k.25 Content of Individual Evaluation.

Each individual evaluation must include:

(a) An assessment of the child's educational status which includes a history of the child's education, an overview of the child's school progress, comparison of the level of educational attainment of the child with the level appropriate for the same age.

(b) An assessment by a teacher who has recently taught or is currently teaching the child in a classroom or other teaching situation which includes an analysis of the child's performance with a comparison of those abilities to the tasks which are contained in the regular education program; a statement of school readiness, functioning or achievement; and a description of the child's behavioral adjustment, attentional capacity, motor coordination, activity levels and patterns, communication skills, memory and social relations with groups, peers, and adults.

(c) An assessment of whether a severe discrepancy between achievement and intellectual ability exists in any of the following areas:

(1) Oral expression;
(2) Listening comprehension;
(3) Written expression;
(4) Basic reading skill;
(5) Reading comprehension;
(6) Mathematics calculation;
(7) Mathematics reasoning.

and, if so, whether the discrepancy exists despite the provision of learning experiences appropriate for the child's age and ability levels.

(d) When determined by the Special Coordinator to be necessary:

(1) a comprehensive health assessment by a physician which identifies medical problems that may affect the child's education, such as: physical constraints, chronic illness, neurological and sensory deficits, developmental dysfunction and needs, emotional and psychological condition, and nutritional state.

(2) an assessment by a psychologist, including an individual psychological examination culminating in specific recommendations, based upon the child's developmental and social history, observation of the child in familiar surroundings (such as a classroom), sensory, motor, language, perceptual, attentional, cognitive, affective, attitudinal, self-image, interpersonal, behavioral, interest and vocational factors, in regard to their maturity, integrity and dynamic interaction within the educational context.

(3) an assessment by a nurse, social worker or a guidance or adjustment counselor of pertinent family history and home situation factors including a description of pertinent family history and individual developmental history, and an estimate of adaptive behavior at home, in the neighborhood and in local peer groups. Estimates of adaptive behavior shall be based to the greatest possible degree on information obtained by direct observation of the child or direct interview of the child in the home setting.

(e) For a child between the ages of fourteen and twenty-two years, a thorough diagnostic assessment of the ability of the child to benefit from regular or specially designed vocational education programs including, as appropriate, an appraisal of the child's pattern of work behavior, ability to acquire occupational skill and capacity for successful job performance.

## 31k.26 Evaluation Instruments.

(a) No single procedure may be used as the sole criterion for determining an appropriate educational program for a child.

A variety of instruments and sources of information should be utilized and a determination of the child's primary language must be made before the evaluation.

(b) Tests and other evaluation materials used to assess the nature and extent of the child's disability or suspected disability and to assess general or specific areas of education need, must be:

(1) Tailored to assess specific areas of educational need and not merely those which are designed to provide a single intelligence quotient;

(2) Recommended and validated adequately for the specific purpose(s) for which they are used;

(3) Appropriate for the age and stage of development of each child ts whom they are administered;

(4) Free of racial, cultural, language or sex bias;

(5) Written in the native language or other mode of communication most familiar to the child being assessed (e.g., non-verbal intellectual assessment of deaf children) unless it can be demonstrated that it not feasible to do so;

(6) Selected so as to best ensure that when a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the factor(s) the test purports to measure rather than reflecting the child's impaired sensory, manual or speaking skills (except where those skills are the factors the test purports to measure).

(c) Formal language testing, language inventories and parent interviews will be used, as appropriate, to determine the primary language of the child.

(d) In no event shall an overall IQ score be reported or recorded and in every case determinations of mental retardation shall be based on an assessment of a variety of factors including adaptive behavior and past and current development activities (e.g., indices or manifestations of social, intellectual, adaptive, verbal, motor, language, emotional and self-care development for age).

## 31k.27 Test Administration.

(a) No individual or group IQ test may be administered as part of any individual evaluation, screening or assessment unless the test has been approved for the proposed use by the Director. The Director shall issue guidelines for the use of such tests which, among other things, shall establish a priority for non-verbal assessment.

(b) All tests and other evaluation materials must be administered:

(1) In the native language (oral and/or written) or other mode of communication most familiar to the child being assessed;

(2) In conformance with the administration instructions of their producer;

(3) And their results interpreted in a manner which does not improperly measure the level of sensory, manual or speaking skills of the child being assessed rather than the specified test objectives (e.g., achievement, intelligence);

(4) And interpreted by members of the multi-disciplinary evaluation team who are qualified examiners;

(5) And interpreted in a manner free from racial, cultural and sex bias.

(c) Information sufficient to permit a determination of the cultural compatibility between the child and the test administrator and the testing (or other evaluative) environment must be included in the report of the multi-disciplinary team.

## 31k.28 Location of Evaluation.

The evaluation shall take place in geographical proximity to the school unless moving the child to such a location would seriously endanger the health or safety of the child or of others. Such determination shall be made jointly by the child's parents and the school.

When a child has been referred for an evaluation and, at the time of such referral, such child is in a hospital or is otherwise living away from home, the Agency shall make appropriate arrangements for the provision of the evaluation.

## 31k.29 Emergency Evaluation and Placement.

(a) Where a child demonstrates repeated instances of dangerously assaultive or self-abusive behavior, the child shall be referred immediately by the School Supervisor to the Special Education Coordinator for an emergency evaluation which shall, with parental approval, be convened by the Agency the same day. The Agency shall, no later than the following day, determine that an emergency placement of the child on a temporary basis is unwarranted or shall recommend a temporary placement for the child for a period not to exceed ten days.

(b) The parent shall be informed immediately of the child's behavior and shall participate if possible within the constraints of time, in the emergency evaluation and related placement decision and no special placement shall be made without the prior written approval of the child's parent.

(c) No later than fifteen days after the completion of the emergency evaluation, a comprehensive individual evaluation of the child shall be completed consistent with the provisions of this Part.

(d) A child who, at the time of referral for evaluation, was in the regular education program, shall remain in that regular education program, unless the school or the child's parents submit a written statement showing that the child's remaining in such program endangers the health or safety of the child or substantially disrupts such program for other children. If the showing is made, the Special Education Coordinator may approve a temporary change in placement (*i.e.*, to a special education setting other than the regular classroom) on an emergency basis.

## 31k.30 Independent Educational Evaluation.

(a) An independent educational evaluation must be provided at no expense to the parent if:

(1) a parent disagrees with an individual evaluation obtained by the school and the school obtaining the evaluation either fails to initiate (or fails to prevail in) a hearing to show that its evaluation is appropriate; or

(2) if an independent educational evaluation is requested by a hearing officer, the Director or a court of competent jurisdiction pursuant to the provisions of Section 31k.7 of this Part.

(b) If provided at no expense to the parent, the independent evaluation must be provided consistent with the requirements of this Part.

(c) The multi-disciplinary evaluation team shall give careful consideration to the results of the independent educational evaluation.

## Subpart C - Provision of Special Education and Related Services.

### 31k.31 Free, Appropriate Public Education.

(a) Each school must ensure that a free, appropriate public education is provided to every handicapped child within its jurisdiction from the age of three through twenty-one years.

(b) An appropriate education is one which meets the individual educational needs of a handicapped child as adequately as the needs of other children are met in the least restrictive educational setting. An appropriate education necessarily involves the provision of regular or special education and necessary related aids or services and includes pre-school, elementary school, or secondary school education.

(c) The provision of a free education is the provision of educational and related services without cost to the child (or parents), except for those fees that are imposed on a non-handicapped child, and may consist of the provision of free services or the payment of the costs of the program. Transportation must be provided in order to assure access to persons to services.

### 31k.32 Individualized Education Program.

(a) If, as a result of an individual evaluation, a child is determined to be a handicapped child and in need of special education and related services, schools are required to develop an IEP within thirty days from the date of the written individual evaluation report. The IEP shall set forth the approach which will be taken to ensure that the child will be provided a free, appropriate public education.

(b) If a child has already been determined to be a handicapped child in need of special education and related services and an individual evaluation of the child is not required pursuant to this part during the current school year, the IEP for the next school year must be in effect prior to the first school day of the next full term.

31k.33 Content of IEP.

At a minimum, the IEP must contain:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services;

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved; and

(f) A description of the nature and duration of physical education services to be provided to the child.

31k.34 IEP Development.

(a) Overall responsibility for the development of each IEP rests with the School Supervisor.

(b) The IEP shall be developed by a committee which shall hold at least one meeting among all of its members and which shall consist of:

(1) The child's parent(s);

(2) The School Supervisor, or designee (who shall chair the committee);

(3) The child's current teacher and/or school counselor and other relevant instructional staff;

(4) A member of the multi-disciplinary team knowledgeable about the child, the meaning of the evaluation data and the placement options;

(5) A physician, if a comprehensive health assessment has been conducted;

(6) A licensed psychologist, if a psychological assessment has been conducted;

(7) Any others at the discretion of the child's parents or of the school;

(8) If the child is twelve years of age or older, a representative of the Agency familiar with secondary vocational education program alternatives, when appropriate; and

(9) If the child is fourteen years of age or older or if the Special Education Coordinator or School Supervisor finds it appropriate, the child.

(c) Upon receiving written application from the school, the Director may allow the school to postpone the development of an initial IEP to the beginning of a new school year, if the written evaluation report is completed within fifteen days of the end of the current school year and, if the Director determines that a required member of the IEP committee will be unavailable during the summer recess.

(d) Schools must prepare a progress report related to the instructional objectives specified in the IEP for each handicapped child and must include it with, in, or in lieu of the parent report prepared by the school for all elementary and secondary students.

### 31k.35 Placement Recommendation in the IEP.

(a) Placement recommendations shall be made by the School Supervisor in concert with the IEP committee and shall be incorporated in the IEP.

(b) A proposed placement must be selected from the continuum of alternative placements available to the school. Schools may not decline to propose placement for a child or recommend to parents that a child be enrolled "voluntarily" in non-public school programs. In selecting from the continuum of alternative settings, no handicapped child may be proposed for placement in any of the settings listed below outside of the regular classroom unless it can be demonstrated that the nature or severity of the child's disability is such that education in regular classes (in the school the child would attend if not handicapped) with the use of supplementary aids and services cannot be achieved satisfactorily. The school must make available a continuum which includes, at a minimum:

(1) The regular classroom;

(2) The regular classroom with consultation;

(3) The regular classroom with resource teacher;

(4) the regular classroom with itinerant resource teacher;

(5) The regular classroom in conjunction with a resource room;

(6) A self-contained special classroom with part-time instruction in regular class;

(7) A self-contained special class (regular campus);

(8) A self-contained special class in a special day facility;

(9) Homebound instruction; and

(10) Instruction in hospitals and residential facilities.

(c) Placement of a handicapped child in a boarding school operated by the Bureau which concurrently enrolls non-handicapped children of the same age and grade shall be considered placement in a regular school campus.

(d) Alternative placements may be provided directly by the school, provided through cooperative arrangements with local and state education agencies or, except as provided in (b) below, provided through contractual arrangements with approved non-public schools, agencies or institutions.

(e) Alternative (9), homebound instruction may not be selected unless the handicapped child

(1) currently possesses a physical impairment or illness which directly (or because of treatment required) precludes the movement of the child from a hospital or home environment to the general education environment; or

(2) the child, consistent with the requirements of this Part, has been determined (after an individual evaluation) to require a program of continuous mental health care and treatment which would be seriously disrupted by movement to the general educational environment and which in concert with the proposed homebound instruction should permit the return of the child to the general education environment at a specified date. The Director must be immediately notified of each homebound placement made by the school.

(f) Alternative (10), instruction in residential facilities may not be selected unless the health or safety of the child precludes the child's attendance at a nearby regular or special school for special education services.

(g) Alternative placements (1)-(8) may not be provided through contractual arrangements with approved non-public schools, agencies or institutions if there are a sufficient number of handicapped children with similar educational needs who live or whose parents live within the attendance area served by the school or the agency of which the school is a part to justify the allocation of one teacher pursuant to pupil/teacher ratios established by the Director.

(h) Children both above and below the age at which public education is mandatory for children who are not handicapped may be provided services by a school directly or through a general contractual arrangement between the school and the Agency serving the school so long as:

(1) The only children of the given age receiving services are handicpaped children; and

(2) The organization providing the services, to the extent it also enrolls non-handicapped children of the same age, complies with the least restrictive environment requirements of this Part; and

(3) The school, Agency and subcontractor comply fully with all applicable state and Federal laws and regulations governing the provision of services to children, the facility in which services are provided and the qualifications of the staff providing services.

(i) If the parents and the School Supervisor believe that a residential placement for a child is appropriate they should notify the Special Education Coordinator in writing. Upon receipt of such notice, the Special Education Coordinator with the approval of the Agency Superintendent shall refer the matter to the Division of Social Services for a full investigation of community-based residential alternatives and an exploration of the availability of in-home support services and home substitute services. If admission to a residential facility is recommended by the Division of Social Services for the child and the parent concurs, no such placement shall be made unless the Director upon the recommendation of the Agency Superintendent expressly approves the education component of the proposed placement as providing a free, appropriate public education to the child in the least restrictive environment while residing in the facility. The Director shall not approve the education component of a proposed placement unless a full individual evaluation which meets the requirements of this Part has been conducted.

(j) The temporary admission of a child to a program of respite care or on an emergency basis shall not constitute a significant change in placement if it is made with parental approval and is limited to: no more than thirty days in the case of respite care, and no more than the number of days allowed for emergency commitment (i.e., before court review is required) under the laws of the state in which the school is located.

## 31k.36 Approval of IEP and Placement Recommendation.

(a) Whenever a child's IEP, including the proposed education placement, has been completed the school must attempt to schedule a meeting between the School Supervisor, the child's parent(s), and the receiving teacher at a mutually convenient time no later than ten days after the

IEP completion. This meeting may be the first and only full meeting of the IEP committee. The meeting must include a thorough discussion of the results of the child's individual evaluation, if recently conducted; the child's proposed IEP and the child's proposed educational placement. The School Supervisor must then request parental approval of the educational placement or state that the child's proposed treatment will be modified (as a result of the discussion) within three days of the meeting, at which time parental approval will be requested.

(b) The parent(s) of the child must be provided full and effective notice of the meeting and all reasonable efforts must be made by the School Supervisor to ensure parental participation. A copy of the proposed IEP (including the proposed educational placement) signed by the School Supervisor and by the teacher to be assigned under the proposed educational placement must be given to parent(s) at the same time full and effective notice of the meeting is provided. The written notice to parents shall also contain the following information:

(1) A statement that the evaluation has been completed and that the parents have the right to meet with the School Supervisor, the Evaluation Coordinator or any member of the IEP committee to discuss the adequacy of the IEP, within thirty days from the date of the written notice;

(2) A statement that all papers relevant to the evaluation, including the actual written assessments, are available for inspection by the parents or a designated representative of the parents;

(3) A statement that the parent has a right to an independent evaluation as provided in Section 31k.30 of this Part;

(4) A statement of the parent's options under Subsection (c) of this Section and a form for indicating the option selected by the parent;

(5) A statement explaining the consequences of the parent's rejection of the proposed IEP under the due process procedures established by Section 31k.59 of this Part.

(c) The parent of a child upon receipt of full and effective notice may exercise any of the following options (by giving written notice to the school on the form provided):

(1) To accept or reject the IEP or the written finding that the child does not need special education. A parent may accept an IEP in whole or in part and the school shall immediately implement the mutually accepted elements of the IEP.

(2) To accept a modified IEP that has been mutually agreed upon with the School Supervisor Coordinator following the meeting described in subsection (a) of this Section.

(3) To postpone until the completion of an independent evaluation a decision on the IEP or on the finding that the child does not need special education, and to obtain an independent evaluation of their child.

### 31k.37 IEP Implementation and Placement.

(a) For newly identified children, the IEP must be implemented and educational placement must be made:

(1) Within thirty days after the written parental approval of the IEP has been received; or

(2) If the due process hearing procedure has been activated, within thirty days after a final written decision has been issued by a hearing officer, the Director or a court of competent jurisdiction.

(b) If the school cannot within thirty days provide any or all of the services called for in the IEP, the Agency serving the school must provide such services within fourteen days to fully implement the IEP and make the educational placement.

(c) For children currently receiving services under an IEP consistent with the requirements of this Part, the IEP must be reviewed and revised as appropriate so as to be in effect prior to the first day of school of the next full term.

## 31k.38 IEP Revision, Review of Placement.

(a) Consistent with the requirements of Section 31k.37, the IEP must be reviewed and updated annually. The review and revision of the IEP must be completed no later than the first day of school of the next full term, and reevaluation must be scheduled accordingly. Whenever possible, the review shall be scheduled near the time that there may be a change in the personnel providing the major services to the child under the IEP, as when the child is to move from one grade or school to another. The review shall be conducted as follows:

(1) The School Supervisor, the parents, and the person(s) providing the major services to the child under the IEP shall meet and make a careful review of the child's progress based upon the quarterly progress reports submitted by the school and the observations of those working with the child;

(2) The School Supervisor shall invite in writing the child's parents and, where appropriate, the child, to attend and participate in the review meeting. The School Supervisor or the parents may at their discretion invite other person(s) who have worked with, are working with, or will be working with the child to attend the review meeting;

(3) The participants in the review meeting shall determine:

(i) Whether the child has achieved the goals set forth in the IEP;

(ii) Whether the child has met the criteria which indicate readiness to enter a less restrictive program;

(iii) Whether the program the child is in should be specifically modified to make it more suitable to the child's needs;

(iv) Whether it is desirable to refer the child for an individual reevaluation.

(4) The participants in the review meeting shall review the current IEP and revise as appropriate in accordance with Section 31k.34 of this Part. If a reevaluation of the child is scheduled in accordance with Section 31k.39 of this Part, the revision of the new IEP shall be deferred until completion of the reevaluation, and a written summary of the reevaluation shall be given to the parent within five days prior to the review meeting. If the parent is unable to attend the review meeting, the school shall provide the parent with copies of all relevant documents within five days after the review meeting has been completed;

(5) During the annual review, the description of current educational performance in the IEP must be updated and the overall educational needs, long-term educational goals and related services modifications made. Schools are required to rewrite sections of the IEP only to the extent necessary to update or modify the plan.

(b) Unless in the judgment (documented in writing) of the School Supervisor concurred in by the Special Education Coordinator the child is virtually certain to be unable to function in the less restrictive environment because of the child's educational needs and personal characteristics, or unless the child's current IEP represents the most affirmative strategy appropriate to the needs of the child for educational development and has produced a marked increase in the acquisition and development of knowledge and educational skills, the participants in the review meeting shall revise the IEP on the basis of the annual review and consistent with procedural safeguard requirements to propose the change in the educational placement of each child:

(1) Currently enrolled in a self-contained special classroom in a school to placement in the regular classroom (with supportive aids and services); or

(2) Currently enrolled in a self-contained special classroom in a special day school facility to a self-contained special classroom in a regular school facility or to a less restrictive environment.

### 31k.39 Reevaluation.

The Agency shall provide a full individual reevaluation of a child when such reevaluation is recommended by a parent, teacher or by the Special Education Coordinator. Parental approval is not required for the conduct of a reevaluation if the child has been initially placed and his/her individualized education program has been reviewed following the requirements of this Part. Notice of the conduct of the reevaluation must, however, be provided to the parent.

### 31k.40 Extended School Year Services.

(a) The individualized education program may provide for continuous instruction (uninterrupted by the regular summer recess) whenever:

(1) Continuous instruction is likely to be necessary in order to sustain with only minor regression current important educational skills and information retention;

(2) The child lives in a residential facility or stitution.

(b) The extension of an IEP for a ten to twelve month instructional program shall not result in a more restrictive change in placement on the continuum of alternative placements nor shall it constitute a basis for any deviation from any other educational placement requirement of Section 31k.35 of this Part. However, the increased isolation of handicapped children which could result from the operation of an instructional program for handicapped children during a period of time when non-handicapped children are not attending school would not violate any requirements of this Part.

### 31k.41 Outcome Goals.

IEP's for children over the age of twelve years shall contain, as appropriate, either a description of regular and/or special education instructional services leading to the attainment of a regular high school diploma before the age of twenty-two or a program of regular or special vocational education leading to participation in a work-experience (or sheltered employment) program and the attainment of an appropriate level of vocational proficiency to permit, wherever possible, the child's try into competitive employment upon or before reaching the of twenty-two.

## 31k.42 Related Services.

The school must provide each handicapped child whatever developmental, corrective and other supportive services are required to assist the child to benefit from special education.

## 31k.43 Non-Academic and Extracurricular Services.

(a) Non-academic and extracurricular services and activities must be offered in a way which allows equal opportunity for handicapped children to participate in services and activities.

(b) Non-academic and extracurricular services, meals and recess periods must be provided in the most integrated setting appropriate to the needs of the child.

## 31k.44 Physical Education and Athletics.

(a) Handicapped children must be provided an equal opportunity for participation in physical education courses and inter-scholastic, club or intramural athletics sponsored by the school.

(b) Physical education services must be provided to handicapped children in the regular physical education program and may not be different from those provided other children, unless:

(1) The child is enrolled full time in a separate facility or needs specially designed physical education;

(2) A separate physical education setting is the least restrictive environment; and

(3) No qualified handicapped child is denied opportunity to compete for teams or to participate in courses that are not different.

31k.45 Discipline.

A handicapped child may not be expelled or suspended from school or otherwise subjected to disciplinary treatment if the behavior for which action is being taken is related to the child's disability. Where a handicapped child is so disruptive in the regular classroom or other alternative setting that the education of other children is impaired, the needs of the child cannot be met in that environment. Accordingly, continued placement would not be the least restrictive environment appropriate to the needs of the child and a review of the child's IEP and placement described in Section 31k.38 of this Part must be undertaken.

31k.46 Geographic Accessibility.

Consistent with the requirements of the IEP, the educational placement of a child must be as close to the child's home as possible. The placement of a handicapped child in an off-reservation boarding school operated by the Bureau shall not be regarded as inconsistent with this requirement to the extent that similarly situated non-handicapped are also placed.

31k.47 Architectural Barriers and Program Accessibility.

(a) Facilities used by schools, directly or through contractual arrangement, must be accessible to and usable by handicapped children. The accessibility standards of the American National Standards Institute (ANSI A117.1-1961 (R 1971)) shall be adhered to wherever possible. Small schools located in isolated locations may make application to the Director for a waivering of any standard based on a showing of administrative impossibility. In no event may architectural barriers prevent a handicapped child from being educated in the least restrictive educational environment as defined in Section 31k.35 of this Part.

(b) Program accessibility (i.e., where each program or activity, when viewed in its entirety, is readily accessible to handicapped children) must be ensured in all existing facilities.

(1) Program accessibility may be accomplished through the following methods:

(i) Redesign of equipment;

(ii) Reassignment of classes or other services to accessible building;

(iii) Assignment of aides to children;

(iv) Home visits;

(v) Alteration of existing facilities; or

(vi) Other methods.

(2) The method for accomplishing program accessibility which offers programs and activities to children in the most integrated setting appropriate must be selected.

31k.48-50 Reserved.

## Subpart D - Procedural Safeguards

### 31k.51 Full and Effective Notice.

(a) Full and effective notice is written notice which:

(1) Contains a full explanation of all the procedural safeguards available to the parents including confidentiality requirements;

(2) Describes the proposed (or refused) action, explains the reasons for such action and describes any options which were considered and rejected;

(3) Describes each evaluation procedure, test, record or report used as a basis for the action and any other relevant factors;

(4) Identifies the employee or employees of the school who may be contacted;

(5) Is written in language understandable to the general public and provided in the native language of the parent (oral and/or written) or other mode of communication used by the parent(s) unless clearly not feasible; and

(6) Is also communicated orally (where necessary) in the primary language or other mode of communication so that the parent understands the content of the notice.

(b) If an interpreter is used as part of the procedure for providing full and effective notice, the school must maintain a written record of the interpreting services provided.

### 31k.52 Parental Approval.

(a) Written parental approval of a proposed action may only be obtained from a parent after the parent:

(1) Has been fully informed of all information relevant to the activity for which approval is sought, in his or her primary language or other mode of communication; and

(2) Understands that the granting of approval is voluntary and may be revoked at any time.

(b) Parental approval for the release of documents pursuant to the confidentiality requirements of this Part must also be made by a parent who understands and agrees in writing to the carrying out of the activity in a document which describes the activity and lists the records which will be released.

## 31k.53 Communications to Parents and Children.

Each school shall insure that all communications with parents or with the child pursuant to this Part shall be in both English and the primary language of the home, if such primary language is other than English. Such communications shall be made, to the extent possible, in simple and commonly understood words. Each school shall also insure that if the primary language of the home is other than English, all screening and evaluation, including the conferences and meetings with the parents and the child which are part of the process of such screening and evaluation, shall be conducted by persons fluent in such primary language. If such a person is unavailable, the school shall utilize the services of an interpreter oriented to the procedures and objectives involved in the particular part of the screening or evaluation process. Where the parents or the child are unable to read in any language or are blind or deaf, communications shall be made in writing, orally, or in sign language, whichever is appropriate.

## 31k.54 Rights of Handicapped Children.

Handicapped children (and their parents on their behalf) shall have all of the rights set forth in Part 31i of these Regulations ("Student Rights and Responsibilities and Due Process Procedures") and shall have the right to:

(a) Non-discrimination on the basis of handicap;

(b) A free appropriate public education;

(c) An independent educational evaluation as provided in this Part, and careful consideration of the results of an independent evaluation with respect to the provision of a free appropriate education;

(d) Be accompanied and represented by persons of his/her choice at any meeting or conference required or permitted by this Part;

(e) Inspection and review of all relevant records with respect to the identification, evaluation and placement of the child and the provision of a free appropriate education;

(f) A hearing on any action for which notice is required with opportunity for direct participation, representation by counsel, and other procedural rights;

(g) Complain to the Agency Superintendent for Education and to the Director relating to identification, evaluation or placement or to the provision of a free, appropriate education;

(h) A surrogate parent assigned by the school where appropriate;

(i) A copy of the full written explanation and findings of the individual evaluation as soon as it is completed together with a full oral explanation (effectively communicated) of both the findings and the recommendations;

(j) A personal consultation with a member of the multi-disciplinary team;

(k) Full and effective notice of proposed actions as provided in this Part;

(l) Parental approval or disapproval as provided in this Part;

(m) Information concerning any free or low-cost legal and other relevant services available if a hearing is initiated or upon request; and

## 31k.55 Confidentiality of Information.

(a) Each school and agency must permit parents to inspect and review any records directly relating to their children which are maintained by them or by a party acting for the school.

(b) A parental request to inspect and review records must be complied with without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than fourteen days after the request has been made. The right to inspect and review educational records under this Section includes:

(1) The right to a response to reasonable requests for explanations and interpretations of the records;

(2) The right to request that copies of the records containing the information be provided at no cost to the parents;

(3) The right to have a representative of the parent (authorized in writing) inspect and review the records.

(c) The parent shall be presumed to have authority to inspect and review records relating to his or her child unless the school has been advised that the parent does not have the authority under applicable tribal or state law governing such matters as guardianship, separation, and divorce.

(d) A record of parties obtaining access to education records (except access by parents and authorized employees of the school) must be kept and must include the name of the party, the date access took place, and the purpose of the authorized use.

(e) If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(f) Parents, upon request, shall be provided a list of the types and locations of education records collected, maintained or used by the school, agency or SERC.

(g) A fee for copies of records which are made for parents under this Part may be charged if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(h) A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child, may request that the information be amended. The school or agency must decide whether to amend the information as requested within fourteen days of receipt of request. If the school or agency decides to refuse to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing. A hearing and review process in accordance with the requirements of 45 CFR 99.22 must be available to parents seeking to amend information in the education records where a refusal to make such amendments has occurred. Pending the outcome of the hearings, parents may place in the education records a written notice of objection to records or portions thereof.

(i) Parental approval must be obtained before personally identifiable information is:

(1) Used for any purpose other than meeting a requirement under this Part; or

(2) Disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in this Part.

(j) Information from education records must not be released to participating agencies without parental approval unless the disclosure is consistent with all applicable Federal statutes.

(k) The confidentiality of personally identifiable information must be protected at collection, storage disclosure and destruction stages:

(1) One person designated by the school must assume responsibility for insuring the confidentiality of any personally identifiable information and all persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures set forth in this subpart.

(2) Schools must maintain, for public inspection, a current listing of the names and positions of the employees who may have access to personally identifiable information.

(3) Schools must inform parents when personally identifiable information collected, maintained, or used under this Part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(4) Information contained in the IEP or individual evaluation is confidential and must be available to the professional in need of such information consistent with the responsibilities and requirements established by this Part and existing Federal and state laws governing such information.

## 31k.56 Efforts to Ensure Parental Participation.

In order to insure that one or both parent(s) of the child attends the IEP development meeting, schools must provide parents full and effective notice sufficiently in advance of the meeting to permit attendance. The purpose, time, location and persons in attendance must be included in the notice and the meeting must be scheduled at a mutually agreed on time and place. If neither parent can be contacted, or both refuse or fail to attend a meeting, other methods must be used to insure parent participation.

## 31k.57 Surrogate Parents.

(a) Whenever a school after documented, repeated and reasonable efforts is unable to identify and locate a parent of a handicapped child, or of a child suspected of being a handicapped child, or whenever a child is a ward of a court, the School Supervisor must appoint an individual to act as a surrogate parent after consultation with tribal representatives.

(b) The surrogate parent shall represent the child in all matters relating to the identification, individual evaluation and educational placement of the child and the provision of a free appropriate public education.

(c) The person appointed as a surrogate parent shall:

(1) Have no interest that conflicts with the interests of the child, and is not a present or past employee of the school involved in the education or care of the child or a present employee of the Bureau of Indian Affairs;

(2) Have knowledge and skills that insure adequate representation of the child; and

(3) Wherever possible, be a member of the child's extended family, or if that is not possible, a member of the same tribe as the child.

(d) Surrogate parents may not be appointed for the sole purpose of representing parents at the IEP conference.

(e) Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee.

## 31k.58 Conciliation.

The school must make all reasonable efforts consistent with its obligations under this Part to resolve informally any ongoing disputes between the parent and the school.

## 31k.59 Initiation of Hearings.

(a) If the parent disagrees with any action taken by a school for which full and effective notice to parents is required by this Part, a hearing may be initiated by the parent of a handicapped child or a child suspected of being a handicapped child, by sending a written request for hearing to the Agency Superintendent. The Agency Superintendent for Education must acknowledge receipt of the written request within three days of actual receipt.

(b) Hearings may be initiated by a school by providing full and effective notice to parents in any instance where, after reasonable efforts at conciliation, a parent either fails to provide written approval of a proposed action, or provides a formal disapproval.

(c) Whenever a hearing is initiated, full and effective notice of the initiation of the hearing must be provided by the hearing officer to all persons concerned.

(d) The written notice of hearing shall include:

(1) A statement of the date, time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes or regulations involved;

(4) A short and plain statement of matters asserted.

31k.60 Hearing Procedures.

(a) A hearing must be conducted by the Agency at a time and place which is reasonably convenient to the parents and the child involved.

(b) Both parties to a hearing must have the right:

(1) To respond and present evidence, confront, cross-examine and compel the attendance of witnesses;

(2) To obtain a written or electronic verbatim record of the hearing;

(3) To obtain written findings of fact and decisions;

(4) To appeal the decision of a hearing to the Director and, thereafter to any court having jurisdiction;

(5) To prohibit the introduction of any evidence at the hearing which has not been disclosed at least five days before the hearing; and

(6) If parents, to have the child present and/or to have the hearing open to the public.

(c) The hearing decision must be reached (and a copy mailed to each party) not later than forty-five (45) days after the receipt of a request for a hearing. A decision made in the hearing is final unless an appeal is taken.

(d) Any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children.

(e) Affected school personnel shall have the right to submit a written statement, appear at the hearing and present a brief oral statement.

## 31k.61 Hearing Officers.

(a) A proposed hearing officer must be selected by the Agency Superintendent for Education within one day of receipt of a request for a hearing, from a list, established and maintained by the area/agency.

(b) After selecting a proposed hearing offer, the Agency Superintendent for Education must, within three days, give the parent (s) and the school full and effective notice of the name of the proposed hearing officer.

(c) The parent and school each upon notice of the proposed hearing officer may request that the agency/area determine that the person so proposed is not impartial and may exercise one automatic disqualification during the appointment process. The Director shall resolve all challenges for cause (*i.e.*, partiality).

(d) If the proposed hearing officer is automatically disqualified or found to be not impartial by the Director, the Agency Superintendent for Education must within three days designate another person from the relevant lists.

(e) Final appointment of a hearing officer occurs whenever a proposed hearing officer is selected by the Agency Superintendent for Education and the parent or the school fails to notify the Agency Superintendent for Education of a decision to challenge the impartiality of the proposed hearing officer or of a decision to automatically disquality the proposed hearing officer (available only once for each party), or when the Director determines that no doubt exists as to the impartiality of a proposed hearing officer.

## 31k.62-.64 Reserved.

## Subpart E - Personnel

### 31k.65 Appointment of Special Education Coordinator.

Each Agency must employ a qualified Special Education Coordinator on a full-time basis no later than the effective date of this Part unless the Director approves a written justification for a part-time position.

### 31k.66 In-Service Training.

Each school, agency and area must participate fully in the preparation and implementation of the comprehensive personnel plan administered by the Division and in the program of in-service training to staff responsible for the identification, evaluation and placement of handicapped children, and/or the provision of providing special and related services.

### 31k.67 Certification of Staff.

(a) The Director shall issue on or before December 31, 1980 certification requirements for the following personnel categories:

(1) Special Education Coordinator;

(2) Special Education Teacher;

(3) Adaptive Physical Education Teacher;

(4) Teacher Aide;

(5) Paraprofessional;

(6) Speech Therapist;

(b) On or before October 1, 1981, staff of schools who provide instructional services and instructional support services to any handicapped children must meet all applicable certification requirements established by the Director pursuant to subsection (a) or be participating in an approved transitional training program.

(c) A transitional training program is an in-service training program for employees of the Bureau who do not meet the certification requirements established by the Director for the job classification to which they were assigned on the effective date of this Part. A transitional program may only be approved, if:

(1) For each employee participating in the program, a written program of instruction is developed which, if successfully completed, would result in the employee receiving full certification for the position currently held by the employee, and which describes those specific in-service training activities (including part-time enrollment in higher education institutions and related "release time" provisions) which must be successfully completed.

(2) An overall timetable designed to reach full certification for the individual as quickly as possible is included in the training plan, which in no event extends beyond September 1, 1985; and

(3) The Special Education Coordinator responsible for supervising such services have reviewed and approved the transitional training program in writing.

## 31k.68 Grievance Procedures.

Schools must extend grievance procedures now in effect pursuant to the regulation issued by the U.S. Department of Health, Education and Welfare implementing Title IX of the Education Amendments of 1972 (45 CFR 86.8) to include the grievance of handicapped employees.

## 31k.69 Reserved.

## Subpart F - School Administration

### 31k.70 Assurance of Compliance.

In connection with each annual application, each school must sign a written assurance that the pre-school, elementary and secondary program operated by the school is currently in compliance and will, in the future, be operated in compliance with this Part and any other applicable Federal regulations.

### 31k.71 Self-Evaluation.

Each Agency must complete a comprehensive self-evaluation on or before the first anniversary of the effective date of this Part. In order to carry out such a comprehensive self-evaluation, each Agency must with the direct involvement of interested persons and organizations, including handicapped persons or organizations representing handicapped persons:

(a) Evaluate the current policies and practices and the effects thereof on handicapped persons of the agency and the schools located thereunder;

(b) Modify any policies and practices that are unlawful under this Part or under other applicable Federal regulations;

(c) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from past adherence to these policies and practices; and

(d) Maintain on file for three years following the completion of the self-evaluation, available for public inspection, a list of interested persons consulted, a description of areas examined and any problems identified, and a description of any modifications made and any remedial steps taken.

### 31k.72 Comparability of Facilities.

Facilities which are identifiable as being for handicapped children and the services and activities provided therein, must meet the same standards and level of quality as do facilities, services and activities provided to non-handicapped children.

## 31k.73 Non-Discrimination in Administration of Dormitories and Boarding Schools.

(a) No dormitory or boarding school shall deny admission to any qualified handicapped child on the basis of handicap.

(b) Each dormitory must provide to each handicapped child enrolled therein whatever educational support services (including tutoring, access to instructional equipment, auxillary aids) are necessary to permit the child to fully benefit from the program of special education and related services being provided by the local public schools. Dormitory staff shall contact the Director of Special Education for the local education agency(ies) which serves dormitory children and make known the availability of educational support services at the dormitory.

## 31k.74 Comprehensive System of Personnel Development.

In the preparation and implementation of the comprehensive system of personnel developed mandated by the EHA, the Agency will:

(a) Provide any information required in connection with the annual needs assessment regarding the number of qualified special education instructors, the related service and support personnel available to provide the special education and related services required by this Part.

(b) Identify, on the basis of the annual needs assessment, target populations for personnel development.

(c) Seek the involvement of public and private institutions of higher education and other interested agencies and organizations:

(1) In the development of any policies concerning certification requirements affecting special education;

(2) In the review of annual personnel development training plans;

(3) In the development of in-service training programs; and

(4) In all other appropriate activities.

(d) Follow established monitoring and program evaluation procedures.

(e) Conduct all in-service training programs for schools consistent with the personnel development and manpower training plan; including a region-wide training program to facilitate the dissemination of information and replication of demonstrated and effective educational practices related to the education of handicapped children.

## Subpart G - Responsbilities of the Division

### 31k.75 The Division.

The Division of Exceptional Education of the Office of Indian Education Programs shall provide staff assistance to the Director in insuring the conformance of schools, agencies, and areas with the requirements of this Part. The Division shall prepare and submit the annual program plan required by the EHA. The Division shall be under the supervision of a Division Chief who reports to the Director.

### 31k.76 The Director.

The Director is the officer of the U.S. Department of the Interior responsible for educational programs for handicapped children and charged with the overall responsibility for insuring that every handicapped Indian child to whom this Part applies is provided a free, appropriate public education and, that all requirements of this Part are fully complied with by schools, agencies, areas, and other staff of the Division.

### 31k. 77 Monitoring and Complaint Investigation.

(a) The Division shall regularly monitor and evaluate the compliance of schools, agencies, areas and other affected public and non-public agencies with the requirements of this Part consistent with written procedures for conducting this monitoring (including specific timelines) which include:

(1) Collection of data and reports;

(2) Conduct of on-site visits;

(3) Review of Federal fund utilization;

(4) Comparison (by sampling) of IEP programs; and

(5) Case-by-case review of the continued need for residential placement.

(b) Schools, agencies, areas, non-public school programs and other affected agencies shall keep such records and submit to the responsible Division official (or designee) timely, complete and accurate compliance reports at such times, and in such form and containing such information as is determined to be necessary to enable the Division to ascertain compliance with the requirements of this Part, with due consideration given to the difficulties of collecting information from individual files and records and the need for advance notice.

(c) Schools, agencies, areas, non-public school programs and other affected agencies must permit access by staff of the Division to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance..

(d) The Division shall receive and investigate complaints, initiate its own investigations and conduct hearings with power of subpoena on behalf of an individual child or group of children, regarding failure to comply with any provisions of this Part.

(e) The Division shall closely monitor the implementation of the procedural safeguard requirements of Subpart D of this Part.

## 31k.78 Review of Challenge of Hearing Officer.

(a) The Director must promptly review any written challenge by a parent or school to the impartiality of a proposed hearing officer made pursuant to this Part.

(b) The review must be completed and a written decision prepared within ten days after receipt of a written challenge.

(c) The Director must provide full and effective notice of this decision to the parent, the school and the Agency Superintendent for Education within three days after completion of the review.

(d) If the Director determines that doubt exists as to whether the proposed hearing officer is truly impartial, a new proposed hearing officer must be immediately selected by the Agency Superintendent for Education.

## 31k.79 Use of Available Funds.

The Director shall insure as a condition for receipt of any EHA funds that schools, agencies, areas, and the Division fully utilize all funds specifically appropriated for the special education program of the Bureau and all funds to which schools become entitled pursuant to 25 CFR 31k.12-13 because of the enrollment of handicapped children exclusively for the identification and evaluation of, and the provision of a free, appropriate public education (as defined in 45 CFR 121a.(4)) to handicapped Indian children.

## 31k.80 Children in the Care of the Division of Social Services.

(a) After the effective date of this Part, the Director is vested with full responsibility for the provision of a free, appropriate public education to all handicapped Indian children in the care of the Division of Social Services who reside in any public or private facility.

(b) After the effective date of this Part, no handicapped Indian child in the care of the Division of Social Services may be placed in or referred to any public or private residential facility, the education component of which has not been approved by the Division.

(c) The Director shall insure that no later than one year from the effective date of this Part, every handicapped child currently in the care of the Division of Social Services in a public or private residential facility has been evaluated and provided an IEP in full conformance with the requirements of this Part. The need of the children for continued residentially-based educational services will be carefully assessed during this process.

## 31k.81 Cooperative Programs.

(a) The Director, or designee, is authorized to enter into cooperative agreements with state and local education agencies for the provision of special education and related services to handicapped children enrolled in (or enrollable in) schools operated and/or funded by the Bureau.

(b) The Director may not enter into any cooperative agreement for the provision of special education and related services with state or local education agencies which, with respect to any aspect of the cooperative special education program, discriminates or has the effect of discriminating, against any child on the basis of race, national origin, tribal affiliation, religion, sex, handicap or eligibility for services provided by the Bureau.

(c) The Director is responsible for ensuring that every Indian handicapped child participating in a cooperative special education program is provided a free, appropriate public education in the least restrictive environment consistent with the procedural safeguards required by

## 31k. 82 Non-Compliance.

The Division shall adopt effective procedures for acting on determinations of non-compliance by any public agency which are found to have substance, including:

(a) Negotiation;

(b) Conciliation; and/or

(c) Assumption of direct program responsibility.

## 31k. 83 Vocational Education Coordinator.

The Director shall within sixty (60) days from the effective date of this Part designate a part-time or full-time employee of the Division who shall be responsible for the development of a model program of junior high school, high school and post-secondary vocational education services to handicapped Indian children enrolled in schools to which this Part applies.

## 31k. 84 Further Guidelines and Directives.

The Division shall from time to time issue guidelines and directives to further define, clarify, interpret and explain the requirements of this Part.

# APPENDIX G. RULES AND REGULATIONS

# FOR PL 94-142 and LD

federal register

TUESDAY, AUGUST 23, 1977

PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Office of Education

■

# EDUCATION OF HANDICAPPED CHILDREN

## Implementation of Part B of the Education of the Handicapped Act

### Title 45—Public Welfare

### CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## EDUCATION OF HANDICAPPED CHILDREN

### Implementation of Part B of the Education of the Handicapped Act

AGENCY: U.S. Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: These regulations implement amendments to Part B of the Education of the Handicapped Act (as required by the Education for All Handicapped Children Act of 1975) by: (1) amending the existing regulations governing assistance to States for education of handicapped children, (2) adding a new part on incentive grants programs for handicapped children aged three through five, and (3) making certain conforming amendments to the general provisions for State-administered programs.

These regulations govern the provision of formula grant funds to State and local educational agencies to assist them in the education of handicapped children.

The regulations include provisions which are designed (1) to assure that all handicapped children have available to them a free appropriate public education; (2) to assure that the rights of handicapped children and their parents are protected; (3) to assist States and localities to provide for the education of handicapped children; and (4) to assess and assure the effectiveness of efforts to educate such children.

These regulations also include the final rules for counting and reporting handicapped children. (The child count rules were published in proposed form on September 8, 1976, and were incorporated into the December 30 proposed regulations for the convenience of the reader.)

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Daniel Ringelheim, Director, Division of Assistance to States, Bureau of Education for the Handicapped, 400 Maryland Ave. SW., (room 4046 Donohoe Building), Washington, D.C. 20202, telephone: 202-472-2265;

or

Thomas B. Irvin, Policy Officer, Bureau of Education for the Handicapped, 400 Maryland Ave. SW., (room 4926 Donohoe Building), Washington, D.C. 20202, telephone: 202-245-9405.

SUPPLEMENTARY INFORMATION:

### RULEMAKING HISTORY—PUBLIC PARTICIPATION

Because of the potential impact that Pub. L. 94-142 will have on the education of handicapped children throughout the Nation, and on the agencies that serve them, the Office of Education recognized the need for intensive public participation in the development of regulations, and took steps to insure maximum public involvement throughout the entire rulemaking process. A description of these steps is included in the following paragraphs:

Before the proposed rules were drafted, the Office of Education carried out a massive effort to obtain comments and suggestions for developing regulations from interested parties throughout the Nation. This involved participating in approximately 20 meetings about the law conducted on both a geographic and special interest basis. Approximately 2,200 people participated in these meetings and several hundred comments were received.

In June 1976, the Office of Education convened a national writing group of approximately 170 people to develop concept papers for use in writing the regulations. This group was composed of parents, representatives of special interest organizations (i.e., AFT, NEA, private schools), and administrators of State and local schools. These concept papers formed the basis for the proposed regulations.

During the months of July-November, the Office of Education prepared several redrafts of the concept papers and continued to seek inputs on these drafts from various interested parties.

On December 30, 1976, the proposed rules were published in the FEDERAL REGISTER. Written comments and recommendations on the proposed rules were invited for a 60-day comment period ending March 1, 1977; and public hearings were held in Washington, San Francisco, Denver, Chicago, Boston, and Atlanta. Over 1,000 written comments were received during that period, all of which were reviewed and considered by the Office of Education in preparing these final regulations.

The tapes of the hearings and copies of written comments are available for public inspection at the Bureau of Education for the Handicapped, room 4921, Donohoe Building, 400 6th Street SW., Washington, D.C. 20202.

In addition to the above public comment activities, the Office of Education continued with other public participation efforts, including:

(1) Participating in 10 regional meetings of the American Association of School Administrators and other regional meetings with the Council of the Great City Schools;

(2) Conducting a national conference on the regulations for administrators of various State agency programs for the handicapped, and participating in meetings at other national conferences; and

(3) Participating in a special series of meetings organized by the Institute for Educational Leadership and composed of representatives of the National Governors' Conference, the National Conference of State Legislatures, the National Association of State Boards of Education, and the Education Commission of the States.

### ACTION TAKEN ON PUBLIC COMMENTS

#### PART 100b—STATE ADMINISTERED PROGRAMS

No comments were received on the proposed amendments to Part 100b, and no changes have been made.

#### PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

The Office of Education conducted a careful review of the public comments received and summarized them by subpart and topic.

A very large number of comments dealt with specific statutory requirements. These comments expressed concerns about the statute and suggested changes to be made in the statutory provisions. However, because they are statutory, the Office of Education is not able to make any changes in the regulations with respect to those points. Some of the statutory provisions on which comments were received, together with concerns about them, are included below:

(1) Free appropriate public education—problems with timelines and concerns about the cost of implementing this requirement;

(2) Priorities—concerns about Federal priorities which are not consistent with State and local priorities;

(3) Individualized education programs—suggestions that the requirement be deleted from the regulation unless more funds are available for implementing it;

(4) Prior notice and other due process procedures—concerns about the amount of detail in these requirements and the time, cost and paper work involved in their implementation;

(5) State educational agency responsibility for general supervision of all special education programs in the State—concerns about lack of authority over other State agencies and the lack of funds to efficiently implement the provision;

(6) Child count—concerns about the dates on which the count must be taken.

Another large number of commenters cited specific concerns or issues with respect to the content of the proposed rules. Because of the large number of comments received, individual comments have been consolidated.

#### PART 121m—INCENTIVE GRANTS

Part 121m sets forth the conditions under which States may receive grants to assist in the education of handicapped children aged three through five. Congress established incentive grants in the recognition that when education begins at the earlier stages of development (1) benefits are maximized, (2) additional or more severe handicaps may be prevented, and (3) greater long-term cost-effectiveness is realized.

*Comment:* An issue was raised concerning the possible use of incentive grant funds for children from birth through two years of age.

*Response:* Section 619 of the Act and the legislative history specify that the use of incentive grant funds is limited to children aged three through five years. However, the State's entitlement under section 611 of the Act may be used for children from birth through age twenty-one.

*Comment:* An issue was raised as to whether incentive grant funds may be

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used for administrative or supervisory costs.

*Response:* The regulation has been amended to make it clear that administrative costs are allowable.

### MINIMUM REGULATION—FUTURE RULEMAKING PLANS

The preamble to the proposed rules contained the following statement regarding minimum regulations:

> The Department sees the development of regulations for implementing Pub. L. 94-142 as being an evolutionary process which will continue over a period of several years. The actual impact and consequences of the statutory provisions and problems which State and local educational agencies may have in implementing these provisions are not known at this time. Therefore, the Department feels that the most rational approach to follow is (1) to write minimum regulations at this point, and (2) to amend and revise such regulations in the future as need and experience dictate.
>
> Because the Statute is very comprehensive and specific on many points, the Department has elected (1) to incorporate the basic wording or substance of the Statute directly into the regulations, and (2) to expand on the statutory provisions only where additional interpretation sems to be necessary.

Although some commenters felt that more extensive regulations were necessary, many persons who responded to the proposed rules felt that the Office of Education had already over-regulated and should cut back on the rules when they are published in final form. At this juncture, the Office of Education holds to the same position that it took in the proposed rules, and for the same reasons as set forth in that document.

The Office of Education believes that some working experience with this regulation is essential before determining whether there is a need to amend it. Once the regulation becomes effective (Oct. 1, 1977) and people gain experience in implementing it, there will likely be a series of questions raised in individual States which could result in the development of policies and interpretations that would be proposed for addition to these regulations.

### OVERVIEW OF CHANGES IN THE PART 121a REGULATIONS

A substantial number of changes have been made in response to comments received on the proposed rules. However, few of these changes have resulted in adding major substantive requirements. Most of the changes are technical or have been made in an attempt to provide greater clarity or to add more explanatory material.

Extensive use has been made of explanatory comments in the text of the regulations. The purpose of these comments is to attempt, where appropriate, to clarify or further interpret a particular rule, or to provide direction and assistance without imposing additional requirements. For example, an extensive explanation is included under the excess cost requirement and an example is given on how to make the computation under that requirement.

### ORGANIZATION OF REGULATIONS

Three parts of Title 45 of the Code of Federal Regulations are amended by this document:

(1) Part 100b—*State Administered Programs*. This includes certain conforming amendments to the regulations under section 434(b)(1)(A) of the General Education Provisions Act.

(2) Part 121a—*Assistance to States for Education of Handcapped Children*. This is divided into seven subparts: (A) General, (B) State Annual Program Plans and Local Applications, (C) Services, (D) Private Schools, (E) Procedural Safeguards, (F) State Administration, and (G) Allocation of Funds and Reports.

(3) Part 121m—*Incentive Grants*. This governs the administration of the incentive grants program for handicapped children aged three through five, authorized under section 619 of the Act.

### ANALYSIS OF REGULATIONS

Appendix A of Part 121a includes an analysis of each subpart, which (1) discusses significant comments received and the action taken with respect to those comments, and (2) explains the basis for any changes made from the proposed rules published on December 30, 1976.

### TOPICAL INDEX

Appendix B of Part 121a includes an index of the major topics in the regulations (e.g., free appropriate public education, priorities, and individualized education program) and the specific sections under which each term is used.

NOTE.—The Department of Health, Education, and Welfare, has determined that this document contains a major proposal requiring preparation of an Economic Impact Analysis (EIA) Statement under Executive Orders 11821 and 11949 and OMB Circular A-107, and certifies that an Economic Impact Analysis has been prepared. However, because the portion of this regulation involving major costs is virtually identical to the content of subpart D of the regulation issued on discrimination against the handicapped under section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84; published May 4, 1977, at 42 FR 22676), the Department has determined that (a) this regulation involves no substantial costs not imposed by Part 84 and (b) the pertinent parts of the EIA Statement for that regulation meet the EIA requirements for this regulation. Both regulations impose the following requirements: (1) appropriate education to handicapped children; (2) identification and evaluation of handicapped children; and (3) procedural safeguards for handicapped children and their parents.

(Catalog of Federal Domestic Assistance Number 13.449, Education of Handicapped Children, Part B.)

Dated: August 12, 1977.

JOHN ELLIS,

*Acting U.S. Commissioner of Education.*

Approved: August 15, 1977.

HALE CHAMPION,

*Acting Secretary of Health, Education, and Welfare.*

Title 45 of the Code of Federal Regulations is amended as follows:

## PART 100b—STATE ADMINISTERED PROGRAMS

1. In Part 100b, § 100b.17 is revised to read as follows:

### § 100b.17 General applications.

(a) The general application of a State must meet the requirements of section 434(b)(1)(A) of the General Education Provisions Act.

(b) A State does not have to resubmit its general application.

(20 U.S.C. 1232c(b)(1)(A).)

(c)(1) The following statutes require that a State must submit certain provisions to the Commissioner which are similar to provisions in the general application.

(2) Subject to paragraph (d) of this section, if the Commissioner has approved a State's general application, the State does not have to submit the provisions required under the following statutes:

(i) *Compensatory education*. Section 142(a)(2) and (3) of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III).)

(ii) *School library resources*. Section 203(a)(5), (6) and (7) of Title II of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III), and (IV).)

(iii) *Supplementary educational centers and services; guidance, counseling, and testing*. Section 305(b)(9)(B), (10), and (11) of Title II of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III) and (IV).)

(iv) *Education of the handicapped*. Section 613(a)(7)(A), (9)(B), and (10) of Part B of the Education of the Handicapped Act, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III) and (IV).)

(v) *Adult education*. Section 306(a)(6) and (7) of the Adult Education Act, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii) (II), (III).)

(vi) *Strengthening instruction in academic subjects*. Section 1004(a)(2) and (3) of Title X of the National Defense Education Act of 1958, as amended.

(20 U.S.C. 1232c(b)(1)(A)(ii), (II), (III).)

(vii) *State reading improvement programs*. Section 714(a)(10) of Title VII-B of the Education Amendments of 1974.

(20 U.S.C. 1232c(b)(1)(A)(ii), (III).)

(d)(1) The general application does not change the legal substance of the provisions listed under paragraph (c)(2) of this section.

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(2) If a provision listed in paragraph (c) (2) of this section is different in wording from an assurance in the general application, the provision listed in that paragraph governs any question of compliance with the assurance.

(20 U.S.C. 1232c(b) (1) (B) (i), (b) (1) (B) (iii), (b) (2).)

2. In Part 100b, § 100b.35 is revised to read as follows:

**§ 100b.35 Effective date of an application, plan, or amendment.**

(a) Federal funds are available only for obligations incurred under:

(1) A State plan approved by the Commissioner (in the case of the programs set forth in § 100b.10 other than those referenced in § 100b.15(a)); or

(2) A general application and an annual program plan approved by the Commissioner in the case of the programs referenced in § 100b.15(a)).

(b) A State plan, general application, annual program plan, or amendment to any of them, is effective on the date the State submits it to the Federal Government in substantially approvable form. However, the effective date cannot be earlier than the first day of the fiscal period for which it is submitted.

(c) The Commissioner sends the State agency a notice of approval, including notice of the effective date, when the application, plan, or amendment is approved.

(d) Federal funds are not available for obligation by a State or local agency before the effective date of the State plan or annual program plan (whichever is submitted under paragraph (a) of this section). If funds are expressly made available by statute for the development of the State plan, general application, or annual program plan, the first sentence of this paragraph does not apply to obligations by the State for that purpose.

(20 U.S.C. 1221e-3(a) (1).)

3. In Part 100b, § 100b.55 is revised to read as follows:

**§ 100b.55 Obligation by recipients.**

(a) *Period for obligation.* Federal funds which the Federal government may obligate during a fiscal period remain available for obligation by State and local recipients through the end of that fiscal period. Federal funds made available for construction of facilities remain available for obligation by State and local recipients for that purpose for a reasonable period of time as determined by the Commissioner.

(b) *Carryovers.* In accordance with section 414(b) of the General Education Provisions Act, any Federal funds which are not obligated by State and local recipients before the end of the fiscal period under paragraph (a) of this section, remain available for obligation by those agencies for one additional fiscal year.

(c) *Determinations of obligation.* (1) An obligation for the acquisition of real or personal property, for the construction of facilities, or for the performance of work, is incurred by a recipient on the date it makes a binding written commitment.

(2) An obligation for personal services, for services performed by public utilities, for travel, or for the rental of real or personal property, is incurred by a recipient on the date it receives the services, its personnel takes the travel, or it uses the rented property.

(20 U.S.C. 1221c(a); 1225(b); 1232c(b) (1) (A) (ii) (II).)

4. Part 121a is revised to read as follows:

## PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

### Subpart A—General

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Sec.

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AUTHORITY: Part B of the Education of the Handicapped Act, Pub. L. 91–230, Title VI, as amended, 89 Stat. 776–794 (20 U.S.C. 1411–1420), unless otherwise noted.

### Subpart A—General

#### PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

**§ 121a.1 Purpose.**

The purpose of this part is:

(a) To insure that all handicapped children have available to them a free appropriate public education which in-

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cludes special education and related services to meet their unique needs,

(b) To insure that the rights of handicapped children and their parents are protected,

(c) To assist States and localities to provide for the education of all handicapped children, and

(d) To assess and insure the effectiveness of efforts to educate those children.

(20 U.S.C. 1401 Note.)

### § 121a.2 Applicability to State, local, and private agencies.

(a) *States*. This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) *Public agencies within the State*. The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities.

(c) *Private schools and facilities*. Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency.

(See §§ 121a.400–121a.403.)

(20 U.S.C. 1412(1), (6); 1413(a); 1413(a) (4) (B).)

*Comment*. The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

### § 121a.3 General provisions regulations.

Assistance under Part B of the Act is subject to Parts 100, 100b, 100c, and 121 of this chapter, which include definitions and requirements relating to fiscal, administrative, property management, and other matters.

(20 U.S.C. 1417(b).)

### DEFINITIONS

*Comment*. Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined:

Consent (Section 121a.500 of Subpart E)
Destruction (Section 121a.560 of Subpart E)
Direct services (Section 121a.370(b)(1) of Subpart C)
Evaluation (Section 121a.500 of Subpart E)
First priority children (Section 121a.320(a) of Subpart C)
Independent educational evaluation (Section 121a.503 of Subpart E)
Individualized education program (Section 121a.340 of Subpart C)
Participating agency (Section 121a.560 of Subpart E)
Personally identifiable (Section 121a.500 of Subpart E)
Private school handicapped children (Section 121a.450 of Subpart D)
Public expense (Section 121a.503 of Subpart E)
Second priority children (Section 121a.320(b) of Subpart C)
Special definition of "State" (Section 121a.700 of Subpart G)
Support services (Section 121a.370(b)(2) of Subpart C)

### § 121a.4 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge.

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§ 121a.340–121a.349 of Subpart C.

(20 U.S.C. 1401(18).)

### § 121a.5 Handicapped children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with §§ 121a.530–121a.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which

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adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(20 U.S.C. 1401(1), (15).)

### § 121a.6 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(20 U.S.C. 1417(b).)

### § 121a.7 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which:

(a) Is under the general supervision of a State educational agency;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to handicapped children within that State.

(20 U.S.C. 1401(22).)

### § 121a.8 Local educational agency.

(a) As used in this part, the term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

(20 U.S.C. 1401(8).)

### § 121a.9 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

> The term "native language", when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(20 U.S.C. 880b–1(a)(2); 1401(21).)

*Comment.* Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Billingual Education Act. (The term is used in the prior notice and evaluation sections under § 121a.505(b)(2) and § 121a.532(a)(1) of Subpart E.) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, braille, or oral communication).

### § 121a.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 121a.514. The term does not include the State if the child is a ward of the State.

(20 U.S.C. 1415.)

*Comment.* The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

### § 121a.11 Public agency.

As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the State which are responsible for providing education to handicapped children.

(20 U.S.C. 1412(2)(B); 1412(6); 1413(a).)

### § 121a.12 Qualified.

As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

(20 U.S.C. 1417(b).)

### § 121a.13 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

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(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or language disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools,

(ii) Travel in and around school buildings, and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

(20 U.S.C. 1401(17).)

*Comment.* With respect to related services, the Senate Report states:

> The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(Senate Report No. 94-168, p.12 (1975).)

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

### § 121a.14 Special education.

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401(16).)

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1401(16).)

*Comment.* (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 121a.5.) The definition of "related services" (section 121a.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.

(2) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

### § 121a.15 State.

As used in this part, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virginia Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1401(6).)

## Subpart B—State Annual Program Plans and Local Applications

### ANNUAL PROGRAM PLANS—GENERAL

### § 121a.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency.

(20 U.S.C. 1232c(b), 1412, 1413.)

### § 121a.111 Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

(20 U.S.C. 1412, 1413, 1232c(b).)

### § 121a.112 Certification by the State educational agency and attorney general.

Each annual program plan must include:

(a) A certification by the officer of the State educational agency authorized to submit the plan that:

(1) The plan has been adopted by the State educational agency, and

(2) The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

(b) A certification by the State Attorney General or other authorized State legal officer that:

(1) The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and

(2) All plan provisions are consistent with State law.

(20 U.S.C. 1413(a).)

### § 121a.113 Approval; disapproval.

(a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100b of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for a hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in §§ 121a.580–121a.583 of Subpart E for a hearing under this section.

(20 U.S.C. 1413(c).)

### § 121a.114 Effective period of annual program plan.

(a) Each annual program plan is effective for a period from the date it becomes effective under § 100b.35 of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act.

(20 U.S.C. 1413(a), 1232c(b).)

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## ANNUAL PROGRAM PLANS—CONTENTS

### § 121a.120 Public participation.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 121a.280–121a.284 are met.

(b) Each annual program plan must also include the following:

(1) A statement describing the methods used by the State educational agency to provide notice of the public hearings on the annual program plan. The statement must include:

(i) A copy of each news release and advertisement used to provide notice,

(ii) A list of the newspapers and other media in which the State educational agency announced or published the notice, and

(iii) The dates on which the notice was announced or published.

(2) A list of the dates and locations of the public hearings on the annual program plan.

(3) A summary of comments received by the State educational agency and a description of the modifications that the State educational agency has made in the annual program plan as a result of the comments.

(4) A statement describing the methods by which the annual program plan will be made public after its approval by the Commissioner. This statement must include the information required under paragraph (b)(1) of this section.

(20 U.S.C. 1412(7).)

### § 121a.121 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under § 121a.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) The information must show that the policy:

(1) Applies to all public agencies in the State;

(2) Applies to all handicapped children;

(3) Implements the priorities established under § 121a.127(a)(1) of this subpart; and

(4) Establishes timelines for implementing the policy, in accordance with § 121a.122.

(20 U.S.C. 1412(1)(2)(B), (6); 1413(a)(3).)

### § 121a.122 Timeliness and ages for free appropriate public education.

(a) *General.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Documents relating to timelines.* Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

(20 U.S.C. 1412(2)(B).)

### § 121a.123 Full educational opportunity goal.

Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one.

(20 U.S.C. 1412(2)(A).)

### § 121a.124 Full educational opportunity goal—data requirement.

Beginning with school year 1978–1979, each annual program plan must contain the following information:

(a) The estimated number of handicapped children who need special education and related services.

(b) For the current school year:

(1) The number of handicapped children aged birth through two, who are receiving special education and related services; and

(2) The number of handicapped children:

(i) Who are receiving a free appropriate public education,

(ii) Who need, but are not receiving a free appropriate public education,

(iii) Who are enrolled in public and private institutions who are receiving a free appropriate public education, and

(iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.

(d) A description of the basis used to determine the data required under this section.

(e) The data required by paragraphs (a), (b), and (c) of this section must be provided:

(1) For each disability category (except for children aged birth through two), and

(2) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A).)

*Comment.* In Part B of the Act, the term "disability" is used interchangeably with "handicapping condition". For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in § 121a.5, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child.

States should note that data required under this section are not to be transmitted to the Commissioner in personally identifiable form. Generally, except for such purposes as monitoring and auditing, neither the States nor the Federal Government should have to collect data under this part in personally identifiable form.

### § 121a.125 Full educational opportunity goal—timetable.

(a) *General requirement.* Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) *Content of timetable.* (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

(i) For each disability category (except for children aged birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A).)

### § 121a.126 Full educational opportunity goal—facilities, personnel, and services.

(a) *General requirement.* Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

(b) *Statistical description.* Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and

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the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff.

(3) The total number of personnel reported under paragraph (b) (1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) *Data categories*. The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services,

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) *Rationale*. Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2) (A).)

### § 121a.127 Priorities.

(a) *General requirement*. Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under §§ 121a.320–121a.324 of Subpart C.

(2) The State priorities meet the timelines under § 121a.122 of this subpart, and

(3) The State has made progress in meeting those timelines.

(b) *Child data*. (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in §§ 121a.321 of Subpart C:

(i) By disability category, and

(ii) By the age ranges in § 121a.124(e) (2) of this subpart.

(c) *Activities and resources*. Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(20 U.S.C. 1412(3).)

### § 121a.128 Identification, location, and evaluation of handicapped children.

(a) *General requirement*. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information*. Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b) (1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2) (C).)

*Comment*. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements in §§ 121a.560–121a.576.

### § 121a.129 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Commissioner shall use the criteria in §§ 121a.560–121a.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(20 U.S.C. 1412(2) (D); 1417(c).)

*Comment*. The confidentiality regulations were published in the FEDERAL REGISTER in final form on February 27, 1976 (41 FR 8603–8610), and met the requirements of Part B of the Act, as amended by Pub. L. 94–142. Those regulations are incorporated in § 121a.560–121a.576 of Subpart E.

### § 121a.130 Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and

(2) The procedures which the State educational agency follows in monitoring and evaluating those programs.

(20 U.S.C. 1412(4).)

### § 121a.131 Procedural safeguards.

Each annual program plan must include procedural safeguards which insure that the requirements in §§ 121a.500–121a.514 of Subpart E are met.

(20 U.S.C. 1412(5(A).)

### § 121a.132 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 121a.550–121a.556 of Subpart E are met.

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(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with §§ 121a.550–121a.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(20 U.S.C. 1412(5) (B).)

### § 121a.133 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in §§ 121a.530–121a.534 of Subpart E are met.

(10 U.S.C. 1412(5) (C).)

### § 121a.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in § 121a.600 of Subpart F are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.

(20 U.S.C. 1412(6).)

### § 121a.135 Monitoring procedures.

Each annual program plan must include information which shows that the requirements in § 121a.601 and § 121a.602 of Subpart F are met.

(20 U.S.C. 1412(6).)

### § 121a.136 Implementation procedures—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency

(20 U.S.C. 1412(6).)

### § 121a.137 Procedures for consultation.

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.

(20 U.S.C. 1412(7) (A).)

### § 121a.138 Other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305 (b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV–C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1413(a) (2).)

### § 121a.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under §§ 121a.380–121a.387 of Subpart C.

(20 U.S.C. 1413(a) (3).)

### § 121a.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(20 U.S.C. 1413(a) (4).)

### § 121a.141 Recovery of funds for misclassified children.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.

(20 U.S.C. 1413(a) (5).)

### § 121a.142 Control of funds and property.

Each annual program plan must provide assurance satisfactory to the Commissioner that the control of funds provided under Part B of the Act, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part, and that a public agency administers the funds and property.

(20 U.S.C. 1413(a) (6).)

### § 121a.143 Records.

Each annual program plan must provide for keeping records and affording access to those records, as the Commissioner may find necessary to assure the correctness and verification of reports and of proper disbursement of funds provided under Part B of the Act.

(20 U.S.C. 1413(a) (7) (B).)

### § 121a.144 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.

(20 U.S.C. 1413(a) (8).)

### § 121a.145 Prohibition of commingling.

Each annual program plan must provide assurance satisfactory to the Commissioner that funds provided under Part B of the Act are not commingled with State funds.

(20 U.S.C. 1413(a) (9).)

*Comment.* This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 45 CFR 100b, Subpart F (Cash Depositories).)

### § 121a.146 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(20 U.S.C. 1413(a) (11).)

### § 121a.147 State advisory panel.

Each annual program plan must provide that the requirements of §§ 121a.650–121a.653 of Subpart F are met.

(20 U.S.C. 1413(a) (12).)

### § 121a.148 Policies and procedures for use of Part B funds.

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(20 U.S.C. 1413(a) (1).)

### § 121a.149 Description of use of Part B funds.

(a) *State allocation.* Each annual program plan must include the following information about the State's use of funds under § 121a.370 of Subpart C and § 121a.620 of Subpart F:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.

(4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) *Local educational agency allocation.* Each annual program plan must include:

(1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application),

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(2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application,

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application, and

(4) A description of direct services the State educational agency will provide under § 121a.360 of Subpart C.

(20 U.S.C. 1232c(b) (1) (B) (ii).)

### § 121a.150 Nondiscrimination and employment of handicapped individuals.

(a) Each annual program plan must include an assurance that the program assisted under Part B of the Act will be operated in compliance with Title 45 of the Code of Federal Regulations Part 84 (Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance). The State educational agency may incorporate this assurance by reference if it has already been filed with the Department of Health, Education, and Welfare.

(b) The assurance under paragraph (a) of this section covers, among other things, the specific requirement on employment of handicapped individuals under section 606 of the Act, which states:

> The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

(20 U.S.C. 1406; 29 U.S.C. 794.)

### § 121a.151 Additional information if the State educational agency provides direct services.

If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under §§ 121a.226–121a.228, 121a.231, and 121a.235.

(20 U.S.C. 1413(b).)

## LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

### § 121a.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency.

(20 U.S.C. 1414(a).)

### § 121a.181 Responsibilities of State educational agency.

Each State educational agency shall establish the procedures and format which a local educational agency uses in preparing and submitting its application.

(20 U.S.C. 1414(a)

### § 121a.182 The excess cost requirement.

A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for handicapped children.

(20 U.S.C. 1414(a) (1), (a) (2) (B) (i).)

### § 121a.183 Meeting the excess cost requirement.

(a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under § 121a.184 for the education of each of its handicapped children. This amount may not include capital outlay or debt service.

(b) Each local educational agency must keep records adequate to show that it has met the excess cost requirement.

(20 U.S.C. 1402(20); 1414(a) (1).)

*Comment.* The excess cost requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 121a.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services which exceed the minimum amount. Therefore, if a local educational agency can show that it has (on the average) spent the minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to the other requirements of Part B (priorities, etc.). In the "Comment" under section 121a.184, there is an example of how the minimum amount is computed.

### § 121a.184 Excess costs—computation of minimum amount.

The minimum average amount a local educational agency must spend under § 121a.183 for the education of each of its handicapped children is computed as follows:

(a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(1) For elementary school students, if the handicapped child is an elementary school student, or

(2) For secondary school students, if the handicapped child is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be:

(1) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965, and

(2) Amounts from State and local funds which the agency spent in the preceding school year for:

(i) Programs for handicapped children,

(ii) Programs to meet the special educational needs of educationally deprived children, and

(iii) Programs of bilingual education for children with limited English-speaking ability.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student, or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(20 U.S.C. 1414(a) (1).)

*Comment.* The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under § 121a.183. This example follows the formula in § 121a.184. Under the statute and regulations, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools. The computation for handicapped elementary school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt service are excluded.

*Example:* A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

| | |
|---|---|
| (1) From local tax funds | $2,750,000 |
| (2) From State funds | 7,000,000 |
| (3) From Federal funds | 750,000 |
| | 10,500,000 |

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

| | |
|---|---|
| | $10,500,000 |
| | −500,000 |
| Total expenditures for elementary school students (less capital outlay and debt service) | =10,000,000 |

b. Next, the local educational agency must subtract amounts spent for:

(1) Programs for handicapped children;

(2) Programs to meet the special educational needs of educationally deprived children; and

(3) Programs of bilingual education for children with limited English-speaking ability.

These are funds which the local educational agency actually spent, not funds received last year but carried over for the current school year.

*Example:* The local educational agency spent the following amounts for elementary school students last year:

| | |
|---|---|
| (1) From funds under Title I of the Elementary and Secondary Education Act of 1965 | $300,000 |
| (2) From a special State program for educationally deprived children | 200,000 |
| (3) From a grant under Part B | 200,000 |
| (4) From State funds for the education of handicapped children | 500,000 |

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| | |
|---|---|
| (5) From a locally-funded program for handicapped children | $350, 000 |
| (6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965 | 150, 000 |
| Total | 1, 600, 000 |

(A local educational agency would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: handicapped children, educationally deprived children, and bilingual education for children with limited English-speaking ability.)

This amount is subtracted from the local educational agency's total expenditure for elementary school students computed above:

$$\begin{array}{r} \$10,000,000 \\ -1,600,000 \\ \hline 8,400,000 \end{array}$$

c. The local educational agency next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its handicapped students).

*Example*: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph:

$$\frac{\$8,400,000}{7,000 \text{ students}} = \$1,200/\text{student}$$

This figure is in the minimum amount the local educational agency must spend (on the average) for the education of each of its handicapped students. Funds under Part B may be used only for costs over and above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However, the amounts used in the computation would be those the local educational agency spent last year for the education of secondary school students, rather than for elementary school students.

### § 121a.185 Computation of excess costs—consolidated application.

The minimum average amount under § 121a.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under § 121a.184 in those agencies for elementary or secondary school students, as the case may be.

(20 U.S.C. 1414(a)(1).)

### § 121a.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents a local educational agency from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent a local educational agency from using Part B funds to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for non-handicapped children in that age range. However, the local educational agency must comply with the non-supplanting and other requirements of this part in providing the education and services.

(20 U.S.C. 1402(20); 1414(a)(1).)

### § 121a.190 Consolidated applications.

(a) *Voluntary applications.* Local educational agencies may submit a consolidated application for payments under Part B of the Act.

(b) *Required applications.* A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 121a.360(a)(1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) *Size and scope of program.* The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(20 U.S.C. 1414(c)(1).)

### § 121a.191 Payments under consolidated applications.

In any case in which a consolidated application is approved by the State educational agency, the payments to the participating local educational agencies must be equal to the sum of the entitlements of the separate local educational agencies.

(20 U.S.C. 1414(c)(2)(A).)

### § 121a.192 State regulation of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with section 612(1)–(7) and section 613(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(20 U.S.C. 1414(c)(2)(B).)

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit.

(20 U.S.C. 1414(c)(2)(C).)

### § 121a.193 State educational agency approval; disapproval.

(a) *Approval.* A State educational agency shall approve an application submitted by a local educational agency if the State educational agency determines that the application meets the requirements under §§ 121a.220–121a.240. However, the State educational agency may not approve any application until the Commissioner approves its annual program plan for the school year covered by the application.

(b) *Disapproval.* The State educational agency shall disapprove an application if the State educational agency determines that the application does not meet a requirement under §§ 121a.220–121a.240.

(20 U.S.C. 1414(b)(1).)

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under §§ 121a.506–121a.513 of Subpart E which is adverse to the local educational agency involved in the decision.

(20 U.S.C. 1414(b)(3).)

### § 121a.194 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under § 121a.180;

(3) Or both.

(b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in § 121a.592.

(20 U.S.C. 1414(b)(2).)

## LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

### § 121a.220 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed

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special education and related services and which children are not currently receiving needed special education and related services.

(20 U.S.C. 1414(a)(1)(A).)

*Comment.* The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in §§ 121a.560–121a.576 of Subpart E.

### § 121a.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures which insure that the criteria in §§ 121a.560–121a.574 of Subpart E are met.

(20 U.S.C. 1414(a)(1)(B).)

### § 121a.222 Full educational opportunity goal; timetable.

Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through 21, and

(b) Include a detailed timetable for accomplishing the goal.

(20 U.S.C. 1414(a)(1)(C), (D).)

### § 121a.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 121a.222.

(20 U.S.C. 1414(a)(1)(E).)

### § 121a.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under § 121a.140.

(20 U.S.C. 1414(a)(1)(C)(i).)

### § 121a.225 Priorities.

Each application must include priorities which meet the requirements of §§ 121a.320–121a.324.

(20 U.S.C. 1414(a)(1)(C)(ii).)

### § 121a.226 Parent involvement.

Each application must include procedures to insure that, in meeting the goal under § 121a.222, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(20 U.S.C. 1414(a)(1)(C)(iii).)

### § 121a.227 Participation in regular education programs.

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with §§ 121a.550–121a.553 of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

(20 U.S.C. 1414(a)(1)(C)(iv).)

### § 121a.228 Public control of funds.

Each application must provide assurance satisfactory to the State educational agency that control of funds provided under Part B of the Act and title to property acquired with those funds, is in a public agency for the uses and purposes under this part, and that a public agency administers the funds and property.

(20 U.S.C. 1414(a)(2)(A).)

### § 121a.229 Excess cost.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act only for costs which exceed the amount computed under § 121a.184 and which are directly attributable to the education of handicapped children.

(20 U.S.C. 1414(a)(2)(B).)

### § 121a.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

(i) Decreases in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost.

(20 U.S.C. 1414(a)(2)(B).)

*Comment.* Under statutes such as Title I of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not supplant funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Commissioner looks to see if Part B funds are used for any costs which were previously paid for with State or local funds.

The nonsupplanting requirement prohibits a local educational agency from supplanting State and local funds with Part B funds on either an aggregate basis or for a given expenditure. This means that if an LEA spent $100,000 for special education in FY 1977, it must budget at least $100,000 in FY 1978, unless one of the conditions in § 121a.230 (b)(1) applies.

Whether a local educational agency supplants with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been switched from local funding to Part B funding, this would appear to be supplanting. However, if that teacher was taking over a different position (such as a resource room teacher, for example), it would not be supplanting. Moreover, it might be important to consider whether the particular action of a local educational agency led to an increase in services for handicapped children over that which previously existed. The intent of the requirement is to insure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to handicapped children.

### § 121a.231 Comparable services.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency meets the requirements of this section.

(b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

(20 U.S.C. 1414(a)(2)(C).)

*Comment.* Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under §§ 121a.320–121a.324.

### § 121a.232 Information—reports.

Each application must provide that the local educational agency furnishes information (which, in the case of reports relating to performance, is in accordance with specific performance criteria developed by the local educational agency and related to program objectives) as may be necessary to enable the State educational

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agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in the local educational agency's programs for handicapped children.

(20 U.S.C. 1414(a) (3) (A).)

### § 121a.233 Records.

Each application must provide that the local educational agency keeps such records, and affords access to those records, as the State educational agency may find necessary to insure the correctness and verification of the information that the local educational agency furnishes under § 121a.232.

(20 U.S.C. 1414(a) (3) (B).)

### § 121a.234 Public participation.

(a) Each application must:

(1) Provide for making the application and all documents related to the application available to parents and the general public; and

(2) Provide that all evaluations and reports required under § 121a.232 are public information.

(b) In implementing the requirement in paragraph (a)(1), the local educational agency shall use methods for public participation within its jurisdiction which are comparable to those required in § 121a.280–121a.284 of this subpart. However, the local educational agency is not required to hold public hearings.

(20 U.S.C. 1414(a) (4).)

### § 121a.235 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with §§ 121a.340–121a.349 of Subpart C.

(20 U.S.C. 1414(a) (5).)

### § 121a.236 Local policies consistent with statute.

Each application must provide assurance satisfactory to the State educational agency that all policies and programs which the local educational agency establishes and administers are consistent with section 612(1)–(7) and section 613(a) of the Act.

(20 U.S.C. 1414(a) (6).)

### § 121a.237 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of §§ 121a.500–121a.514 of Subpart E.

(20 U.S.C. 1414(a) (7).)

### § 121a.238 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(20 U.S.C. 1414(a).)

### § 121a.239 Nondiscrimination and employment of handicapped individuals.

(a) Each application must include an assurance that the program assisted under Part B of the Act will be operated in compliance with Title 45 of the Code of Federal Regulations Part 84 (Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance). The local educational agency may incorporate this assurance by reference if it has already been filed with the Department of Health, Education, and Welfare.

(b) The assurance under paragraph (a) of this section covers, among other things, the specific requirement on employment of handicapped individuals under section 606 of the Act, which states:

> The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

(20 U.S.C. 1405; 29 U.S.C. 794.)

### § 121a.240 Other requirements.

Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under §§ 121a.120–121a.151.

(20 U.S.C. 1414(a) (6).)

## APPLICATION FROM SECRETARY OF INTERIOR

### § 121a.260 Submission of annual application; approval.

In order to receive payments under this part, the Secretary of Interior shall submit an annual application which:

(a) Meets applicable requirements of section 614(a) of the Act;

(b) Includes monitoring procedures which are consistent with § 121a.601; and

(c) Includes other material as agreed to by the Commissioner and the Secretary of Interior.

(20 U.S.C. 1411(f).)

### § 121a.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with §§ 121a.280–121a.284.

(20 U.S.C. 1411(f).)

### § 121a.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of Interior in any fiscal year must be used in accordance with the priorities under §§ 121a.320–121a.324 of Subpart C.

(20 U.S.C. 1411(f).)

### § 121a.263 Applicable regulations.

The Secretary of Interior shall comply with the requirements under Subparts C, E, and F.

(20 U.S.C. 1411(f)(2).)

## PUBLIC PARTICIPATION

### § 121a.280 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(20 U.S.C. 1412(7).)

### § 121a.281 Notice.

(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act,

(2) The availability of the annual program plan,

(3) The date, time, and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and

(5) The timetable for developing the final plan and submitting it to the Commissioner for approval.

(c) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1412(7).)

### § 121a.282 Opportunity to participate; comment period.

(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 121a.281.

(20 U.S.C. 1412(7).)

### § 121a.283 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1412(7).)

### § 121a.284 Publication and availability of approved plan.

After the Commissioner approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(20 U.S.C. 1412(7).)

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## Subpart C—Services

### FREE APPROPRIATE PUBLIC EDUCATION

### § 121a.300 Timelines for free appropriate public education.

(a) *General.* Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Age ranges 3–5 and 18–21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94–168 p. 19 (1975).)

*Comment.* 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under section 121a.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under § 121a.321.

2. In order to be in compliance with § 121a.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§ 121a.530–121a.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93–380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a State-wide basis.

Under the statute, the age range for the child find requirement (0–21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under § 121a.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under §§ 121a.320–121a.324.

### § 121a.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

(20 U.S.C. 1401(18); 1412(2)(B).)

### § 121a.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(20 U.S.C. 1412(2)(B); 1413(a)(4)(B).)

*Comment.* This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.

### § 121a.303 Proper functioning of hearing aids.

Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school are functioning properly.

(20 U.S.C. 1412(2)(B).)

*Comment.* The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

> In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(House Report No. 95–381, p. 67 (1977).)

### § 121a.304 Full educational opportunity goal.

(a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under §§ 121a.320–121a.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

*Comment.* In meeting the full educational opportunity goal, the Congress also encouraged local educational agencies to include artistic and cultural activities in programs supported under this part, subject to the priority requirements under §§ 121a.320–121a.324. This point is addressed in the following statements from the Senate Report on Pub. L. 94–142:

> The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.
>
> Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in Federally-supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Senate Report No. 94–168, p. 13 (1975).)

### § 121a.305 Program options.

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to non-handicapped children in the

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area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

*Comment*. The above list of program options is not exhaustive, and could include any program or activity in which non-handicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under §§ 121a.320-121a.324.

### § 121a.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

### § 121a.307 Physical education.

(a) *General*. Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.

(b) *Regular physical education*. Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to non-handicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) *Special physical education*. If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(d) *Education in separate facilities*. The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6).)

*Comment*. The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:

> Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.
>
> * * * * *
>
> The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(House Report Nó. 94-332, p. 9 (1975).)

## PRIORITIES IN THE USE OF PART B FUNDS

### § 121a.320 Definitions of "first priority children" and "second priority children."

For the purposes of §§ 121a.321-121a.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under § 121a.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.

(20 U.S.C. 1412(3).)

*Comment*. After September 1, 1978, there should be no second priority children since States must insure, as a condition of receiving Part B funds for fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date.

NOTE.—The term "free appropriate public education," as defined in § 121a.4 of Subpart A, means "special education and related services which * * * are provided in conformity with an individualized education program * * *."

New "First priority children" will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all handicapped children.

### § 121a.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under § 121a.620.

(20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii).

(c) State and local educational agencies may not use funds under Part B of the Act for preservice training.

(20 U.S.C. 1413(a)(3); Senate Report No. 94-168, p. 34 (1975).)

*Comment*. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly-identified first priority children.

After September 1, 1978, Part B funds may be used:

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide free appropriate public education to newly identified first priority children;

(3) To meet the full educational opportunities goal required under section 121a.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual handicapped children; and

(4) To meet the other requirements of Part B.

### § 121a.322 First priority children—school year 1977-1978.

(a) In school year 1977-1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall:

(1) Provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1978.

(b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services.

(c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have available to them at least an interim program of services.

(20 U.S.C. 1411 (b), (c).)

*Comment*. This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an inservice training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.

### § 121a.323 Services to other children.

If a State or a local educational agency is providing free appropriate public education to all of its first priority children,

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that State or agency may use funds provided under Part B of the Act:

(a) To provide free appropriate public education to handicapped children who are not receiving any education and who are in the age groups not covered under § 121a.300 in that State; or

(b) To provide free appropriate public education to second priority children; or

(c) Both.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(2)(A)(ii).)

### § 121a.324 Application of local educational agency to use funds for the second priority.

A local educational agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application):

(a) That all first priority children have a free appropriate public education available to them;

(b) That the local educational agency has a system for the identification, location, and evaluation of handicapped children, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to the child.

(20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414 (a)(1)(C)(ii).)

## INDIVIDUALIZED EDUCATION PROGRAMS

### § 121a.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 121a.341–121a.349.

(20 U.S.C. 1401(19).)

### § 121a.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

*Comment:* This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

### § 121a.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 121a.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94–142, Sec. 8(c) (1975).)

*Comment.* Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 121a.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

### § 121a.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977–1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5).)

*Comment.* The dates on which agencies must have individualized education programs (IEPs) in effect are specified in § 121a.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 121a.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

### § 121a.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 121a.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

*Comment.* 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

### § 121a.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the pur-

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pose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

*Comment.* The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

### § 121a.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

### § 121a.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 121a.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B).)

### § 121a.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 121a.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)

*Comment.* This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

## DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

### § 121a.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year:

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of §§ 121a.220–121a.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under §§ 121a.182–121a.186 do not apply to the State educational agency.

(20 U.S.C. 1411(c)(4); 1413(b); 1414(d).)

*Comment.* Section 121a.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If a local educational agency elects not to apply for its Part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the regulations for section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84). It should be noted that the term "FAPE" has different meanings under Part B and section 504. For example, under Part

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**B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.**

### § 121a.361 Nature and location of services.

The State educational agency may provide special education and related services under § 121a.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provisions in §§ 121a.550–121a.556 of Subpart E).

(20 U.S.C. 1414(d).)

### § 121a.370 Use of State educational agency allocation for direct and support services.

(a) The State shall use the portion of its allocation it does not use for administration to provide support services and direct services in accordance with the priority requirements under §§ 121a.320–121a.324.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided to a handicapped child by the State directly, by contract, or through other arrangements.

(2) "Support services" includes implementing the comprehensive system of personnel development under §§ 121a.-380–121a.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children.

(20 U.S.C. 1411(b)(2), (c)(2).)

### § 121a.371 State matching.

**Beginning with the period July 1, 1978–June 30, 1979, and for each following year, the funds that a State uses for direct and support services under § 121a.370 most be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 121a.360.**

(20 U.S.C. 1411(c)(2)(B), (c)(4)(B).)

***Comment.*** **The requirement in § 121a.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.**

### § 121a.372 Applicability of nonsupplanting requirement.

**Beginning with funds appropriated for Fiscal Year 1979 and for each following Fiscal Year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 121a.706(a) of Subpart G for administration, direct services, or support services.**

(20 U.S.C. 1411(c)(3).)

## COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

### § 121a.380 Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional, related services, and support personnel;

(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in § 121a.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicaped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

(20 U.S.C. 1413(a)(3).)

### § 121a.381 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the State which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under § 121a.383.

(20 U.S.C. 1412(7)(A); 1413(a)(3).)

### § 121a.382 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of State-wide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (f)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) Specify: (i) The funding sources to be used, and

(ii) The time frame for providing it; and

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(7) Specify procedures for effective evaluation of the extent to which program objectives are met.

(20 U.S.C. 1413(a)(3).)

### § 121a.383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs;

(b) Describe the results of the needs assessment under § 121a.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).

(20 U.S.C. 1413(a)(3).)

### § 121a.384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.

(20 U.S.C. 1413(a)(3).)

### § 121a.385 Adoption of educational practices.

(a) Each annual program plan must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(20 U.S.C. 1413(a)(3).)

### § 121a.386 Evaluation.

Each annual program plan must include:

(a) Procedures for evaluating the overall effectiveness of:

(1) The comprehensive system of personnel development in meeting the needs for personnel, and

(2) The procedures for administration of the system; and

(b) A description of the monitoring activities that will be undertaken to assure the implementation of the comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3).)

### § 121a.387 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(20 U.S.C. 1413(a)(3).)

## Subpart D—Private Schools

### HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

### § 121a.400 Applicability of §§ 121a.401–121a.403.

Sections 121a.401–121a.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(20 U.S.C. 1413(a)(4)(B).)

### § 121a.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized education program which meets the requirements under §§ 121a.340–121a.349 of Subpart C;

(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B).)

### § 121a.402 Implementation by State educational agency.

In implementing § 121a.401, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(20 U.S.C. 1413(a)(4)(B).)

### § 121a.403 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under §§ 121a.450–121a.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under §§ 121a.500–121a.514 of Subpart E.

(20 U.S.C. 1412(2)(B); 1415).)

### HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES

### § 121a.450 Applicability of §§ 121a.451–121a.460.

As used in §§ 121a.451–121a.460, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 121a.400–121a.403.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.451 State educational agency responsibility.

The State educational agency shall insure that:

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The other requirements in §§ 121a.452–121a.460 are met.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(b) Each local educational agency shall provide private school handicapped children with genuine opportunities to participate in special education and related services consistent with the number of those children and their needs.

(20 U.S.C. 1413(a)(4)(A); 1414(a)(6).)

### § 121a.453 Determination of needs, number of children, and types of services.

The needs of private school handicapped children, the number of them who will participate under this part, and the types of special education and related services which the local educational agency will provide for them must be determined after consultation with persons knowledgeable of the needs of these

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children, on a basis comparable to that used in providing for the participation under this part of handicapped children enrolled in public schools.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.454 Service arrangements.

Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the provision of mobile educational services and equipment.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.455 Differences in services to private school handicapped children.

A local educational agency may provide special education and related services to private school handicapped children which are different from the special education and related services it provides to public school children, if:

(a) The differences are necessary to meet the special needs of the private school handicapped children, and

(b) The special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance.

(20 U.S.C. 1413(a)(4)(a); *Wheeler v. Barrera*, 417 U.S. 402 (1974).)

### § 121a.456 Personnel.

(a) Public school personnel may be made available in other than public school facilities only to the extent necessary to provide services required by the handicapped children for whose needs those services were designed, and only when those services are not normally provided by the private school.

(b) Each State or local educational agency providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.

(c) The services provided with funds under Part B of the Act for eligible handicapped children enrolled in private schools may not include:

(1) The payment of salaries of teachers or other employees of private schools except for services performed outside their regular hours of duty and under public supervision and control; or

(2) The construction of private school facilities.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.457 Equipment.

(a) Equipment acquired with funds under Part B of the Act may be placed on private school premises for a limited period of time, but the title to and administrative control over all equipment must be retained and exercised by a public agency.

(b) In exercising administrative control, the public agency shall keep records of and account for the equipment, and shall insure that the equipment is used solely for the purposes of the program or project, and remove the equipment from the private school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.458 Prohibition of segregation.

Programs or projects carried out in public facilities, and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools, may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.459 Funds and property not to benefit private school.

Funds provided under Part B of the Act and property derived from those funds may not inure to the benefit of any private school.

(20 U.S.C. 1413(a)(4)(A).)

### § 121a.460 Existing level of instruction.

Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private schools.

(20 U.S.C. 1413(a)(4)(A).)

## Subpart E—Procedural Safeguards

### DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

### § 121a.500 Definitions of "consent", "evaluation", and "personally identifiable".

As used in this part: "Consent" means that: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with §§ 121a.530–121a.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c).)

### § 121a.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of §§ 121a.500–121a.514.

(20 U.S.C. 1415(a).)

### § 121a.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in §§ 121a.562–121a.569 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(A).)

### § 121a.503 Independent educational evaluation.

(a) *General.* (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with § 121a.301 of Subpart C.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 121a.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

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(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A).)

### § 121a.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under § 121a.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) *Consent.* (1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 121a.506-121a.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 121a.510—121a.513.

(20 U.S.C. 1415(b)(1) (C), (D).)

*Comment.* 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

### § 121a.505 Content of notice.

(a) The notice under § 121a.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c)(1) and (2) of this section have been met.

(20 U.S.C. 1415(b)(1)(D))

### § 121a.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 121a.504(a)(1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1415(b)(2).)

*Comment:* Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

### § 121a.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(20 U.S.C. 1414(b)(2).)

### § 121a.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(20 U.S.C. 1415(d).)

### § 121a.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless

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a party to the hearing appeals the decision under § 121a.510 or § 121a.511.

(20 U.S.C. 1415(c).)

### § 121a.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 121a.508 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under § 121a.512.

(20 U.S.C. 1415 (c), (d); H. Rep. No. 94-664, at p. 49 (1975).)

*Comment.* 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in section 121a.508, relating to hearings, also apply.

### § 121a.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 121a.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under § 121a.510 has the right to bring a civil action under section 615(e)(2) of the Act.

(20 U.S.C. 1415.)

### § 121a.512 Timeliness and convenience of hearings and reviews.

(a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(20 U.S.C. 1415.)

### § 121a.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1415(e)(3).)

*Comment.* Section 121a.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

### § 121a.514 Surrogate parents.

(a) *General.* Each public agency shall insure that the rights of a child are protected when:

(1) No parent (as defined in § 121a.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(20 U.S.C. 1415(b)(1)(B).)

## PROTECTION IN EVALUATION PROCEDURES

### § 121a.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 121a.530–121a.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(5)(C).)

### § 121a.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of § 121a.532.

(20 U.S.C. 1412(5)(C).)

### § 121a.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those

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skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(20 U.S.C. 1412(5)(C).)

*Comment.* Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

### § 121a.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in §§ 121a.550–121a.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with §§ 121a.340–121a.349 of Subpart C.

(20 U.S.C. 1412(5)(C); 1414(a)(5).)

*Comment.* Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

### § 121a.534 Reevaluation.

Each State and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with §§ 121a.340—121a.349 of Subpart C, and

(b) That an evaluation of the child, based on procedures which meet the requirements under § 121a.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

(20 U.S.C. 1412(5)(c).)

## LEAST RESTRICTIVE ENVIRONMENT

### § 121a.550 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 121a.550–121a.556.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv).)

### § 121a.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under § 121a.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(20 U.S.C. 1412(5)(B).)

### § 121a.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement:

(1) Is determined at least annually,

(2) Is based on his or her individualized education program, and

(3) Is as close as possible to the child's home;

(b) The various alternative placements included under § 121a.551 are available to the extent necessary to implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B).)

*Comment.* Section 121a.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84—Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *."

2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parent's right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.

### § 121a.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 121a.306 of Subpart C, each public agency shall insure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

(20 U.S.C. 1412(5)(B).)

*Comment.* Section 121a.553 is taken from a new requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[A new paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided

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opportunities for participation with other children." (45 CFR Part 84—Appendix, Paragraph 34.)

### § 121a.554 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that § 121a.550 is effectively implemented.

(20 U.S.C. 1412(5) (B).)

*Comment.* Under section 612(5) (B) of the statute, the requirement to educate handicapped children with nonhandicapped children also applies to children in public and private institutions or other care facilities. Each State educational agency must insure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

### § 121a.555 Technical assistance and training activities.

Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies:

(a) Are fully informed about their responsibilities for implementing § 121a.550, and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(20 U.S.C. 1412(5) (B).)

### § 121a.556 Monitoring activities.

(a) The State educational agency shall carry out activities to insure that § 121a.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 121a.550 of this subpart, the State educational agency:

(1) Shall review the public agency's justification for its actions, and

(2) Shall assist in planning and implementing any necessary corrective action.

(20 U.S.C. 1412(5) (B).)

## CONFIDENTIALITY OF INFORMATION

### § 121a.560 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.561 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 121a.128 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 121a.568.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading,

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or otherwise in violation of the privacy or other rights of the child.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.570 Hearing procedures.

A hearing held under § 121a.568 of this subpart must be conducted according to the procedures under § 99.22 of this title.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 121a.129 of Subpart B and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(20 U.S.C. 1412(2) (D); 1417(c).)

*Comment.* Under section 121a.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in pargraph (b).

### § 121a.574 Children's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(20 U.S.C. 1412(2) (D); 1417(c).)

*Comment.* Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.4(a)), the rights of parents regarding education records are transferred to the student at age 18.

### § 121a.575 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(20 U.S.C. 1412(2) (D); 1417(c).)

### § 121a.576 Office of Education.

If the Office of Education or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Commissioner shall apply the requirements of 5 U.S.C. section 552a(b) (1)-(2), (4)-(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(20 U.S.C. 1412(2) (D); 1417(c).)

## OFFICE OF EDUCATION PROCEDURES

### § 121a.580 Opportunity for a hearing.

The Commissioner gives a State educational agency reasonable notice and an opportunity for a hearing before taking any of the following actions:

(a) Disapproval of a State's annual program plan under § 121a.113 of Subpart B.

(b) Withholding payments from a State under § 121a.590 or under section 434(c) of the General Education Provisions Act.

(c) Waiving the requirement under § 121a.589 of this subpart regarding supplementing and supplanting with funds provided under Part B of the Act.

(20 U.S.C. 1232c(c); 1413(a) (9) (B); 1413 (c); 1416.)

### § 121a.581 Hearing panel.

The Commissioner appoints a Hearing Panel consisting of not less than three persons to conduct any hearing under § 121a.530 of this subpart.

(20 U.S.C. 1232c(c); 1413(a) (9) (B); 1413 (c); 1416.)

### § 121a.582 Hearing procedures.

(a)(1) If the Hearing Panel determines that oral testimony would not materially assist the resolution of disputed facts, the Panel shall give each party an opportunity for presenting the case:

(i) In whole or in part in writing, or

(ii) In an informal conference before the Hearing Panel.

(2) The Hearing Panel shall give each party:

(i) Notice of the issues to be considered (if this notice has not already been given); and

(ii) An opportunity to be represented by counsel.

(b) If the Hearing Panel determines that oral testimony would materially assist the resolution of disputed facts, the Panel shall give each party, in addition to the requirements under paragraph (a) (2) of this section:

(1) An opportunity to obtain a record of the proceedings;

(2) An opportunity to present witnesses on the party's behalf; and

(3) An opportunity to cross-examine witnesses either orally or with written questions.

(20 U.S.C. 1232c(c); 1413(a) (9) (B); 1413 (c); 1416.)

### § 121a.583 Initial decision; final decision.

(a) The Hearing Panel shall prepare an initial written decision which includes findings of fact and the conclusions based on those facts.

(b) The Hearing Panel shall mail a copy of the initial decision to each party (or to the party's counsel) and to the Commissioner, with a notice that each

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party has an opportunity to submit written comments regarding the decision to the Commissioner within a specified reasonable time.

(c) The initial decision of the Hearing Panel is the final decision of the Commissioner unless, within 25 days after the end of the time for receipt of written comments, the Commissioner informs the Panel in writing that the decision is being reviewed.

(d) Review by the Commissioner is based on the decision, the written record, if any, of the Hearing Panel's proceedings, and written comments or oral arguments by the parties.

(e) No decision under this section becomes final until it is served on the State educational agency or its attorney.

(20 U.S.C. 1232o(c); 1413(a)(9)(b); 1413(c); 1416.)

### § 121a.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local Educational agencies must insure that Federal funds provided under Part B of the Act are used to supplement the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See § 121a.-372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Commissioner concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Commissioner considers the information which the State provides under paragraph (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing under §§ 121a.580–121a.583 with regard to any final action by the Commissioner under this section.

(20 U.S.C. 1411(c)(3); 1413(a)(9)(B).)

### § 121a.590 Withholding payments.

(a) The Commissioner may make the following findings only after reasonable notice and an opportunity for a hearing under §§ 121a.580–121a.583 to the State educational agency involved (and to any local educational agency affected by any failure described in paragraph (a)(2) of this section):

(1) That there has been a failure to comply substantially with the provisions of section 612 and 613 of the Act, or

(2) That in the administration of the annual program plan there is a failure to comply with any provision of this part or with any requirement in the application of a local educational agency approved by the State educational agency under the annual program plan.

(b) After making either of the findings in paragraph (a) of this section, the Commissioner:

(1) Shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

(2) May, after notifying the State educational agency, withhold further payments to the State under the Federal programs referred to in § 121a.139 of Subpart B which are within his jurisdiction, to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children.

(c) If the Commissioner withholds payments under paragraph (b) of this section he may determine:

(1) That withholding is limited to programs or projects under the annual program plan, or portions of it, affected by the failure, or

(2) That the State educational agency must not make further payments under Part B of the Act to specified local educational agencies affected by the failure.

(20 U.S.C. 1416(a).)

### § 121a.591 Reinstating payments.

Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in § 121a.590(a):

(a) No further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) of the Act which are within his jurisdiction to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children, or

(b) Payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure.

(20 U.S.C. 1416(a).)

### § 121a.592 Public notice by State and local educational agencies.

Any State educational agency and local educational agency which receives a notice under § 121a.590(a) shall by means of a public notice, take any necessary measures to inform the public within the agency's jurisdiction of the pendency of the action.

(20 U.S.C. 1416(a).)

### § 121a.593 Judicial review of Commissioner's final action on annual program plan.

If any State is dissatisfied with the Commissioner's final action with respect to its annual program plan submitted under Subpart B, the State may under section 616(b) of the Act, within sixty days after notice of the action, file a petition for review of that action with the United States Court of Appeals for the circuit in which the State is located.

(20 U.S.C. 1416(b).)

## Subpart F—State Administration

### STATE EDUCATIONAL AGENCY RESPONSIBILITIES: GENERAL

### § 121a.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring;

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(20 U.S.C. 1412(6).)

*Comment.* The requirement in § 121a.600 (a) is taken essentially verbatim from sec-

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tion 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agency responsibility, the Senate Report on P.L. 94-142 includes the following statements:

> This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency * * *.
>
> Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Senate Report No. 94-168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(3) State law, regulation, or policy designates the State educational agency as responsible for establishing standards for all educational programs for the handicapped, and includes responsibility for monitoring.

(4) State law mandates that the State educational agency is responsible for all educational programs.

### § 121a.601 Monitoring and evaluation activities.

Each State educational agency shall:

(a) Undertake monitoring and evaluation activities to insure compliance of all public agencies within the State with the requirements of Subparts C, D, and E.

(b) Develop procedures (including specific timelines) for monitoring and evaluating public agencies involved in that education of handicapped children. These procedures must include:

(1) Collection of data and reports;

(2) Conduct of on-site visits;

(3) Audit of Federal fund utilization; and

(4) Comparison of a sampling of individualized education programs with the programs actually provided.

(20 U.S.C. 1412(6); 1413(a)(11).)

*Comment:* In carrying out the requirements of paragraph (b) of this section, State educational agencies could include additional procedures, such as involving parents or representatives of parent organizations in on-site visits and other monitoring activities.

### § 121a.602 Adoption of complaint procedures.

(a) Each State educational agency shall adopt effective procedures for reviewing, investigating, and acting on any allegations of substance, which may be made by public agencies, or private individuals, or organizations, of actions taken by any public agency that are contrary to the requirements of this part.

(b) In carrying out the requirements in paragraph (a) of this section, the State educational agency shall:

(1) Designate specific individuals within the agency who are responsible for implementing the requirements;

(2) Provide for negotiations, technical assistance activities, and other remedial action to achieve compliance; and

(3) Provide for the use of sanctions, including the withholding of Part B funds in accordance with § 121a.194

(20 U.S.C. 1412(6).)

## USE OF FUNDS

### § 121a.620 Federal funds for State administration.

A State may use five per cent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than the amount which the State may use under § 121a.704 or § 121a.705, as the case may be.

(20 U.S.C. 1411 (b), (c).)

### § 121a.621 Allowable costs.

(a) The State educational agency may use funds under § 121a.620 of this Subpart for:

(1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for handicapped children; and

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under § 121a.620 in accordance with § 121a.370 of Subpart C.

(20 U.S.C. 1411 (b), (c).)

## STATE ADVISORY PANEL

### § 121a.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 121a.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.

(20 U.S.C. 1413(a)(12).)

### § 121a.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) State and local educational officials.

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(20 U.S.C. 1413(a)(12).)

*Comment.* The membership of the State advisory panel, as listed in paragraphs (a)(1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);

(2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;

(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

### § 121a.652 Advisory panel functions.

The State advisory panel shall:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the

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State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

(20 U.S.C. 1413(a)(12).)

### § 121a.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 121a.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 121a.620 for this purpose.

(20 U.S.C. 1413(a)(12).)

## Subpart G—Allocation of Funds; Reports

### ALLOCATIONS

### § 121a.700 Special definition of the term State.

For the purposes of § 121a.701, § 121a.702, and §§ 121a.704–121a.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1411(a)(2).)

### § 121a.701 State entitlement; formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is:

(1) 1978—5 percent,
(2) 1979—10 percent,
(3) 1980—20 percent,
(4) 1981—30 percent, and
(5) 1982, and for each fiscal year after 1982, 40 percent.

(20 U.S.C. 1411(a)(1).)

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for the purpose of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. 1411(a)(4).)

### § 121a.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 121a.701 of this subpart, the Commissioner may not count:

(1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State;

(2) Children with specific learning disabilities to the extent that the number of those children is greater than two percent of the number of all children aged five through 17 in the State; and

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged five through 17 in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(20 U.S.C. 1411(a)(5).)

### § 121a.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. 1411(g)(1).)

(b) *Reporting dates for local educational agencies and reallocations.*

(1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational agency shall report to the State the amount of funds available to it under this part which it estimates it will expend.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in §121a.707, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(20 U.S.C. 1411(g)(2).)

### § 121a.704 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(20 U.S.C. 1411(a)(1).)

### § 121a.705 Within-State distribution: fiscal year 1978.

Of the funds received under § 121a.701 of this subpart by any State for fiscal year 1978:

(a) 50 percent may be used by the State in accordance with the provisions of § 121a.620 of Subpart F and § 121a.370 of Subpart C, and

(b) 50 percent shall be distributed to local educational agencies in the State in accordance with § 121a.707.

(20 U.S.C. 1411(b)(1).)

### § 121a.706 Within-State distribution: fiscal year 1979 and after.

Of the funds received under § 121a.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979:

(a) 25 percent may be used by the State in accordance with § 121a.620 of Subpart F and § 121a.370 of Subpart C, and

(b) 75 percent shall be distributed to the local educational agencies in the State in accordance with § 121a.707.

(20 U.S.C. 1411(c)(1).)

### § 121a.707 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services bears to the aggregate number of handicapped children aged three through 21 receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.

(20 U.S.C. 1411(d).)

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### § 121a.708 Reallocation of local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reallocate funds (or portions of those funds which are not required to provide special education and related services) made available to the local agency under § 121a.707, to other local educational agencies within the State which are not adequately providing special education and related services to all handicapped children residing in the areas served by the other local educational agencies.

(20 U.S.C. 1414(e).)

### § 121a.709 Payments to Secretary of Interior.

(a) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for that assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior.

(b) The amount of those payments for any fiscal year shall not exceed one percent of the aggregate amounts available to all States for that fiscal year under Part B of the Act.

(20 U.S.C. 1411(f)(1).)

### § 121a.710 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601 (c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(20 U.S.C. 1411(e).)

## REPORTS

### § 121a.750 Annual report of children served—report requirement.

(a) The State educational agency shall report to the Commissioner no later than April 1 of each year the number of handicapped children aged three through 21 residing in the State who are receiving special education and related services.

(b) The State educational agency shall submit the report on forms provided by the Commissioner.

(20 U.S.C. 1411(a)(3).)

*Comment.* It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged five through seventeen, a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make free appropriate public education available to all of those handicapped children.

### § 121a.751 Annual report of children served—information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

(1) The number of handicapped children receiving special education and related services on October 1 and on February 1 of that school year, and the average of the numbers for those two dates;

(2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in § 121a.5 of Subpart A; and

(3) The number of those handicapped children within each of the following age groups:

(i) Three through five;

(ii) Six through seventeen; and

(iii) Eighteen through twenty-one.

(b) A child must be counted as being in the age group corresponding to his or her age on the date of the count: October 1 or February 1, as the case may be.

(c) The State educational agency may not report a child under more than one disability category.

(d) If a handicapped child has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped."

(20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b).)

### § 121a.752 Annual report of children served—certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(20 U.S.C. 1411(a)(3); 1417(b).)

### § 121a.753 Annual report of children served—criteria for counting children.

(a) The State educational agency may include handicapped children in its report who are enrolled in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education;

(4) Are counted by a State agency under section 121 of the Elementary and Secondary Education Act of 1965, as amended; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 121a. 186(b) of Subpart B.

(20 U.S.C. 1411(a)(3); 1417(b).)

*Comment.* 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Office of Education expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech therapy is the only special education required by the child. For example, the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that where a handicapped child is placed in or referred to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special

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education. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.

### § 121a.754 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements in this subpart, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with § 121a.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Insure that documentation is maintained which enables the State and the Commissioner to audit the accuracy of the count.

(20 U.S.C. 1411(a)(3); 1417(b).)

*Comment.* States should note that the data required in the annual report of children served are not to be transmitted to the Commissioner in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

## APPENDIX A—ANALYSIS OF FINAL REGULATION (45 CFR PART 121a) UNDER PART B OF THE EDUCATION OF THE HANDICAPPED ACT

These regulations set forth requirements to be followed by States and localities if they are to receive funds under Part B of the Education of the Handicapped Act. The regulations cover matters such as the identification, location, and evaluation of handicapped children; the provision of free appropriate public education; the establishment of a full educational opportunity goal; the count of handicapped children for allocation purposes; priorities in the use of Part B funds; the proper use of Part B funds; the development of an individualized education program; the creation of a comprehensive personnel development system; procedural safeguards (e.g. right to notice and conduct of hearings); methods to guarantee public participation; and details about State annual program plans and local educational agency applications.

### RELATIONSHIP BETWEEN REGULATIONS UNDER PART B AND REGULATIONS UNDER SECTION 504

The regulations under section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84; published at 42 FR 22676; May 4, 1977) deal with nondiscrimination on the basis of handicap and basically require that recipients of Federal funds provide equal opportunities to handicapped persons (for example, that they meet the needs of handicapped persons to the same extent that the needs of nonhandicapped persons are met). Subpart D of the section 504 regulations ("Preschool, Elementary, and Secondary Education") contains requirements very similar to those in Part B of the Education of the Handicapped Act.

Basically, both require that handicapped persons be provided a free appropriate public education; that handicapped students be educated with nonhandicapped students to the extent appropriate; that educational agencies identify and locate all unserved handicapped children; that evaluation procedures be adopted to insure appropriate classification and educational services; and that procedural safeguards be established.

In several respects, however, the section 504 regulations are broader in coverage than Part B. For example, the definition of "handicapped person" and "qualified handicapped person" under section 504 covers a broader population than the definition of "handicapped children" under Part B. Under the Part B definition, a handicapped child is a child who has one of the impairments listed in the Act, who because of that impairment requires special education and related services. Under section 504, a handicapped person is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of that type of impairment, or is regarded as having that impairment (§ 84.3(j)).

The regulations for section 504 also deal with a number of subjects not covered by the Part B regulations (for example, barrier-free facilities and program accessibility; employment; postsecondary education and health, welfare and social services). On the other side, Part B contains a substantial number of administrative requirements not included under section 504 (for example, annual program plans and local applications) and requires more detailed procedures and policies in many instances (such as due process procedures).

In several instances, the section 504 regulations specifically reference where a requirement may be met by complying with a requirement under Part B. For example, § 84.33(b)(2), dealing with appropriate education, cites implementation of an individualized education program as one means of meeting the requirement. Section 84.33(d) has a September 1, 1978 outside date for providing an appropriate education to qualified handicapped persons (conforming to the timelines in Part B). Section 84.35(d) indicates that a reevaluation procedure consistent with the Part B requirements is one means of meeting the reevaluation requirements under section 504. Section 84.36, dealing with due process requirements, indicates that compliance with the procedural safeguards in Part B is one means of meeting those requirements.

It should be noted that the term "free appropriate public education" (FAPE) has different meanings under Part B and section 504. For example, under Part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program. However, under section 504, each recipient must provide an education which includes "the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *"

There is also a major difference between Part B and the section 504 regulations concerning the matter of exclusion of handicapped children from school. As of the effective date of the section 504 regulations (June 3, 1977), exclusion of handicapped children from school constitutes a violation of those requirements. However, under Part B, States are not required to serve all handicapped children aged 3–18 until September 1, 1978. As stated in Appendix A of the section 504 regulations:

The EHA requires a free appropriate education to be provided to handicapped children "no later than September 1, 1978," but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to § 84.33. Section 84.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of § 84.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

### PART 121a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

### SUBPART A—GENERAL

Subpart A sets forth the purposes and applicability of these regulations and includes definitions of statutory terms (e.g. free appropriate public education, special education, and related services) and other definitions related to those terms.

The following comments were received regarding Subpart A.

### APPLICABILITY OF REGULATIONS TO STATE, LOCAL AND PRIVATE AGENCIES (§ 121a.2)

*Comment:* A commenter felt that the statement regarding the applicability of the regulations was not clear, and should be revised to indicate that the requirements apply to any public agency serving handicapped children, even if the agency does not receive Part B funds.

*Response:* A definition of "public agency" has been added to the regulations. The definition includes all political subdivisions in the State that are responsible for educating handicapped children. Throughout the regulation, the term "public agency" has been used to make it clear where the requirements do not apply only to State and local educational agencies. In addition, an explanatory comment was added after section 121a.2 to make it clear that the requirements under Part B are binding on each public agency in the State that has direct or delegated authority for the education of handicapped children, regardless of whether that agency receives Part B funds.

### DEFINITIONS (§§ 121a.4–121a.13)

*Comment:* Hundreds of comments were received regarding definitions in the proposed rules. Commenters requested that new definitions be added, or sought changes in existing definitions, especially definitions of various disability categories and the various types of related services. In many instances, revisions were sought to conform to the most recent definitions adopted or used by professional associations.

*Response:* Definitions of terms used in the regulations are taken from various statutes, Congressional reports, or materials provided by professional associations and other groups. Where appropriate, the Office of Education has attempted to incorporate changes recommended by commenters, and has made other changes to clarify the definitions. In addition, the following new terms were added:

Definitions of "deaf-blind" and "multihandicapped" were added because these are recognized categories of handicapped children in most States.

A definition of "qualified" was added in order to be able to use a consistent term in

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referring to the qualifications of the various personnel.

The definition of "handicapped children" has been modified only by making certain clarifying changes. Although some commenters requested additional changes in the definitions of the various disability categories, it is felt that the definitions in this regulation must closely conform to current usage in the States and professions.

The related services definition was expanded to include "school health services." In addition, changes were made in the definitions of the individual terms included under "related services" (e.g., psychological services and recreation) to conform to recommendations of professional associations.

### SUBPART B—STATE ANNUAL PROGRAM PLANS AND LOCAL APPLICATIONS

Subpart B includes the requirements relating to State annual program plans, local educational agency applications, participation by the Bureau of Indian Affairs, and public participation.

Two new sections (sections 121a.150 and 121a.239) have been added to require assurances from the State educational agencies and local educational agencies that the program under Part B will be operated in compliance with the section 504 regulations, including the requirements under section 606 of the Education of the Handicapped Act regarding employment of qualified handicapped individuals in programs assisted under the Act. (The Office for Civil Rights has been delegated authority for enforcing section 606.)

A substantial number of commenters were concerned with the following major issues in this subpart: (1) the amount of data required of State and local educational agencies; (2) the excess costs, nonsupplanting and comparability requirements; and (3) the public participation requirements. In addition, as with other subparts, many commenters objected to statutory requirements and sought interpretations of the statute and regulations.

### ANNUAL PROGRAM PLANS

#### CONDITION OF ASSISTANCE (§ 121a.110)

Section 434(b) of the General Education Provisions Act (GEPA), as amended by Pub. L. 93-380, requires each State to submit (1) a general application containing five assurances, and (2) an annual program plan for each Office of Education program under which funds are provided to local educational agencies through, or under the supervision of, the State educational agency. Under Section 434(b), and the implementing regulations (45 CFR 100b, Subpart B), the general application and an annual program plan take the place of a State plan for Part B (45 CFR 100b.19).

The five assurances required under section 434(b) of the GEPA cover proper administration, fiscal control and accounting, reports, supplanting, and submission of the annual program plan. Where Part B contains plan requirements covering the same subject matters, submission of those plan requirements is satisfied by the State's submission of the general application. They do not have to be submitted as part of the annual plan. The Part B plan provisions which do not have to be submitted in the annual program plan are referenced in 45 CFR § 100b.17(c)(2)(iv). Note that a substantive section on the nonsupplanting requirement for local educational agencies is set out in § 121a.230.

Under 45 CFR 100b.18(c), material may be incorporated by reference in an annual program plan if the material is in a document previously approved by the Commissioner and on file in the Office of Education. This should save some paperwork, particularly in the years after the first annual program plan (for school year 1977-1978) is submitted under these regulations.

The provisions to be included in the annual program plan for Part B are set forth in §§ 121a.120-121a.151 of these regulations (which include the conditions of eligibility and the State plan requirements under sections 612 and 613 of the Act and section 434(b)(1)(B)(ii) of the GEPA (which requires each annual program plan to "set forth a statement describing the purposes for which Federal funds will be expended during the fiscal year for which the annual program plan is submitted")).

#### APPROVAL; DISAPPROVAL (§ 121a.113)

The following is clarification about the submission of draft annual program plans for review by the Office of Education and how this would affect the issuance of grant award documents:

A State educational agency may elect to send a copy of its proposed annual program plan to the Commissioner for technical assistance purposes at the same time that the plan is being made available for public comment. However, funds cannot be obligated by a State before the date on which its official adopted plan is received in substantially approvable form by the Federal Government. (See 45 CFR 100b.35.)

EXAMPLE: A State educational agency's proposed plan for a particular school year is received by the Bureau of Education for the Handicapped on June 1. Its official plan is received on August 1. When BEH approves the plan (e.g. September 1), the State educational agency will receive a grant award document which will show August 1, as the earliest date of obligation under that plan.

#### EFFECTIVE PERIOD OF ANNUAL PROGRAM PLAN (§ 121a.114)

The Office of Education is proposing to use the period July 1-June 30 for State annual program plans in those programs where appropriations become available for obligation by the Federal Government each July 1 (the so-called "advance funded" programs). The purpose of this is to meet the statutory requirement for an annual program plan covering a 12-month period and at the same time to conform as closely as possible to the regular school year. However, even if the proposed procedure is adopted, the obligational period of State and local agencies for funds from any fiscal year would not be changed. If a State submits its annual program plan and receives its grant on the earliest possible date (July 1), the funds are available for obligation at the State and local level for 27 months, subject to submission or extension of the annual program plan for the following year. (This period includes the 12-month carryover provision under the Tydings Amendment. See 45 CFR 100b.55 (Obligation by recipients).) For example, if a State received its grant for fiscal year 1978 on July 1, 1977, the funds would be available for obligation at the State and local level from July 1, 1977 through September 30, 1979. The rules which govern when an annual program plan becomes effective, and State and local authority to obligate the Federal funds are located in 45 CFR Part 100b, Subpart B.

#### PUBLIC PARTICIPATION (§ 121a.120)

*Comment:* Commenters wanted this section to be expanded to require the States to describe in detail a number of additional specific steps to be taken in complying with the public participation requirements of the Act. For example, they wanted States to develop a roster of interested persons to whom plans and other documents would routinely be sent. The commenters felt that these steps would be necessary to insure full public participation.

*Response:* Requirements have been added (in §§ 121a.280 et seq.) to spell out in more detail the State's duties regarding public participation in development of the annual program plan (for example, indicating in the notice of public hearings of the plan the timetable for developing the final plan and submitting it to the Commissioner). A requirement has also been added to specify that the plan must be available for comment at least 30 days following the date notice is given.

Another revised section indicates that the public participation requirements for local educational agencies are to be comparable to those required of the State, except that public hearings are not required (§ 121a.234).

#### FULL EDUCATIONAL OPPORTUNITY GOAL REQUIREMENTS (§§ 121a.124-121a.126)

*Comment:* Commenters disagreed about the amount of data which should be required under this (and other) sections. Some commenters sought to have the regulations require a substantial amount of additional data (about the population of handicapped children and their placements) on the grounds that it is needed for effective monitoring. Others sought to have the amount of data to be reported substantially reduced as unnecessary and fulfilling no useful purpose.

*Response:* The final regulations eliminate the data requirements in proposed section 121a.24(a) for school year 1977-1978. Since the funds for FY 1978 became available for obligation by the Federal government on July 1, 1977, the States began submitting annual program plans for school year 1977-1978 before these regulations were published. Therefore, it would be inappropriate to impose a retroactive data requirement. No substantive change has been made in the data requirement for school years 1978-1979 and thereafter. The Office of Education believes that the remaining amount of data sought is necessary and adequate to provide information on what and how children are being served. Additional information may be sought on a case by case basis from each State where necessary to monitor compliance with Part B. In addition, requirements have been added to Subpart F to increase each State's monitoring and enforcement obligations.

*Comment:* Commenters requested that the data requirements regarding personnel needed to meet the full educational opportunity goal include various other professional groups, such as physical therapists, or use terms currently accepted by the professions, such as "therapeutic recreation specialists" rather than "recreation therapists."

*Response:* These changes have been made to cover the various personnel who provide special education or related services and to use terms currently recognized by the appropriate professional associations.

### LOCAL EDUCATIONAL AGENCY APPLICATIONS

#### PARENT INVOLVEMENT (§ 121a.226)

*Comment:* Commenters wanted the regulations to require the establishment of a parent advisory committee in each school district.

*Response:* No change has been made. Extensive public and parental participation is already required under sections 121a.226 and 121a.234.

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### EXCESS COST REQUIREMENTS (§§ 121a.182–121a.186)

*Comment:* A substantial number of commenters requested clarification and explanation of the excess cost requirement.

*Response:* The section on excess costs has been broken out into five sections for easier reading. Section 121a.184 specifies that a local educational agency must spend a certain minimum amount for the education of handicapped children before Part B funds may be used. A detailed example of determining the minimum amount follows revised section 121a.184.

### NONSUPPLANTING AND COMPARABLE SERVICES (§§ 121a.230–121a.231)

*Comment:* A substantial number of commenters requested clarification of these requirements. Some commenters proposed detailed procedures and urged that the regulations require the reporting of a substantial amount of data to monitor compliance with these requirements. Some commenters felt the comparability requirement should be met by comparing expenses for regular and special education.

*Response:* These sections have been substantially revised to attempt to explain these requirements. Detailed procedures and reporting requirements are not adopted at this time because local educational agencies are otherwise required to maintain auditable records to document their compliance with these and other requirements.

Regarding nonsupplanting, the regulation provides that the requirement applies to total aggregate funds and particular costs. A local educational agency meets the requirement if (1) the total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children is at least equal to the total amount or average per capita amount of State and local school funds actually expended for their education in the most recent preceding fiscal year for which information is available. Allowances may be made for decreases in enrollment of handicapped children and unusually large amounts of funds expended for long-term purposes (construction); and (2) Part B funds are not used to displace State or local funds for any particular cost.

The statutory requirement for comparability is implemented by prohibiting a local educational agency from using funds under Part B to provide services to handicapped children, unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency. This should insure that handicapped children who receive services with Part B funds are treated equally with handicapped children who do not receive services with Part B funds. It would be too difficult to make an objective comparison between special and regular education. The concern of the commenters who asked for this comparison should be met by the excess cost requirement, which provides that a local educational agency must spend a minimum amount, on the average, for each of its handicapped children.

*Comment:* Commenters requested that the regulations make it clear that the local applications must meet the requirements imposed on the State in Subpart B.

*Response:* A section has been added to make it clear that each local application must include additional procedures and other information which the State educational agency may require in order to meet the State annual program plan requirements in Subpart B. The requirement for local educational agencies to be consistent with the annual program plan is set forth in section 121a.236.

### APPLICATION FROM SECRETARY OF INTERIOR (§§ 121a.260–121a.261)

These sections have been rewritten to clarify that the annual application by the Secretary of the Interior for schools operated for Indian children must meet the applicable requirements of section 614(a), include other material as agreed to by the Commissioner and the Secretary of the Interior, and meet monitoring and public participation requirements.

### PUBLIC PARTICIPATION

See the comments on Section 121a.120.

## SUBPART C—SERVICES

Subpart C contains regulations governing the major service components required under Part B of the Act. These include free appropriate public education, the full educational opportunity goal, priorities in the use of Part B funds, individualized education programs, direct services by the State educational agency, and the State comprehensive system of personnel development.

## FREE APPROPRIATE PUBLIC EDUCATION

### FREE APPROPRIATE PUBLIC EDUCATION REQUIREMENTS (§§ 121a.300–121a.303)

*Comment:* Commenters disagreed with the interpretation of "State law or practice" in the proposed regulations. Some commenters felt the exception to the requirement to make free appropriate public education (FAPE) available to children in the age ranges three through five and 18 through 21 applies only if State law (or a court order) specifically prohibits services, or only if the State's practice is to provide services to less than a majority of the State's handicapped children. Others felt the requirement does not apply to the lower and upper age ranges unless the State is in fact serving all nonhandicapped children in those age ranges.

*Response:* The requirement has been redrafted to clarify the use of the exception and to insure at a minimum that handicapped children in any of these age ranges are served to the extent nonhandicapped children are served (to be consistent with nondiscrimination requirements under section 504).

Section 121a.300 ("Timeliness for free appropriate public education") breaks "practice" down by individual public agency, disability category, and age group. This revision is designed to maximize the number of handicapped children aged 3–5 and 18–21 who receive services. It should reduce the reluctance of agencies wishing to serve children in those age groups, because services to a few handicapped children will not require services to all handicapped children in all of the disabilities.

Section 121a.300 also includes an amendment designed to insure that each time a public agency elects to serve a handicapped child, the child receives the full range of rights and services, whether or not FAPE is mandated for that age range.

### FREE APPROPRIATE PUBLIC EDUCATION METHODS AND PAYMENTS (§ 121a.301–121a.303)

*Comment:* Commenters disagreed on which agencies or parties should bear the costs of educating a handicapped child, especially room and board costs. Commenters sought clarification of when the costs must be borne by the State or local educational agency.

*Response:* The proposed regulation on methods and costs for FAPE (proposed § 121a.201) has been redrafted and expanded as follows:

(1) A new paragraph has been added to section 121a.301; which states: "Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child."

(2) Section 121a.302 states that if placement in a public or private residential program is necessary to provide FAPE to a handicapped child, the program (including non-medical care and room and board) must be at no cost to the child's parents.

Both of these changes have been made to conform to the regulations implementing section 504.

*Other Changes:* A new section 121a.303 has been added regarding the proper functioning of hearing aids. This section is based on a special study conducted by the Office of Education ("The Condition of Hearing Aids as Worn by Children in Public Schools," GPO publication date Summer, 1977).

### FULL EDUCATIONAL OPPORTUNITY GOAL (§§ 121a.304–121a.306)

The statutory terms "free appropriate public education" and "full educational opportunity goal" are distinguished in this regulation as follows:

"Free appropriate public education" (FAPE) must (1) be made available to all handicapped children within the mandated time lines and age ranges set forth in the Act, and (2) include special education and related services which are provided in accordance with an individualized education program.

"Full educational opportunity goal" is broader in scope than "FAPE." It is an all-encompassing term, which (1) covers all handicapped children aged birth through twenty-one, (2) includes a basic planning dimension (including making projections of the estimated numbers of handicapped children), (3) permits each agency to establish its own timetable for meeting the goal, and (4) calls for the provision of additional facilities, personnel, and services to further enrich a handicapped child's educational opportunity beyond that mandated under the "FAPE" requirement. The term "goal" means an end to be sought. However, while an agency may never achieve its goal in the absolute sense, it must be committed to implementing this provision, and must be in compliance with the policies and procedures in the Annual Program Plan under this provision. Further, the agency is not relieved from its obligations under the "FAPE" requirement.

The proposed rule on full educational opportunity goal has been revised as follows: Proposed paragraph (a) (Program options) is now § 121a.305 and proposed paragraph (b) (Non-academic services) is now § 121a.306. A new § 121a.304 has been added which (1) requires each State educational agency to insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children, and (2) authorizes State and local educational agencies to use Part B funds to provide the facilities, personnel and services necessary to meet the goal.

A comment has been added following section 121a.304 which points to Congressional interest in having artistic and cultural activities included in programs supported under this part, subject to the priorities.

*Comment:* Many commenters asked that additional areas be added to the program options requirement (e.g., leisure education, cultural and performing arts, and occupational education). Other commenters requested that the term "consumer and homemaking education" be substituted for "home economics" in order to be consistent with the

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vocational education amendments of 1976 (Pub. L. 94-482).

*Response:* No substantive change was made in this requirement. The program options included are examples and the list is not exhaustive. Under the regulation implementing section 504, any program provided to nonhandicapped students must also be made available to handicapped pupils. The language conforming to the vocational education amendments was added.

*Comment:* Commenters requested that under the requirement on nonacademic services the term "cocurricular" be substituted for "extra curricular" and that intramural, extramural, and interscholastic athletics be included in order to insure consistent use of terminology as it applies nationally. Another commenter suggested that specific language be included regarding participation of visually handicapped persons.

*Response:* The suggested terms were not adopted. This section conforms to the language in the final regulations under section 504. Also, the suggested language on visually handicapped was not included. This requirement applies to all handicapped individuals, including those with visual handicaps.

### PHYSICAL EDUCATION (§ 121a.307)

*Comment:* Some commenters felt that the section on physical education (PE) needed to be clarified, particularly the conditions under which a handicapped child would not be required to participate in the regular PE program; (e.g., the child (a) is enrolled full-time in a separate facility, (b) needs specially designed PE, or (c) the parents and agency agree that the child should not participate). The main concern dealt with the parent-agency agreement, because it appeared to provide a loophole in which a child would not be required to participate in any PE activity.

*Response:* The statement on parent-agency agreement was deleted. With this change, a handicapped child attending a regular school would participate in the regular PE program, unless the child needs specially designed PE as prescribed in his or her individualized education program (IEP). Parent-agency agreement is inherent in the development of a child's IEP. The decision as to whether the child should be in the regular PE program or receive specially designed PE is made in the IEP meeting in which the parent and agency personnel are represented.

It should be noted that every handicapped child would participate in some type of PE activity. Specially designed PE could involve arrangements for a child to participate in some individual sport or physcial activity (e.g., weight lifting, bowling, or an exercise or motor activity program).

*Other changes:* Proposed section 121a.204 (Incidental use of property) has been deleted.

### PRIORITIES IN THE USE OF PART B FUNDS

As part of the provision on free appropriate public education, the law requires each State and local educational agency to establish priorities, first with respect to handicapped children not receiving an education (defined as "first priority children" in the regulations) and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education (defined as "second priority children"). The law further requires that, except for State administration funds, each State and local educational agency must use its full entitlement under part B "in accordance with the priorities." The regulations which implement these priority requirements are included in sections 121a.320–121a.324.

### PRIORITIES (§ 121a.321)

*Comment:* Many commenters were concerned that first priority expenditures cannot be used for inservice training for personnel who can serve those students, and stated that such inservice training activities may be an essential component toward achieving the first priority.

*Response:* The proposed rules have been redrafted and expanded in order to address the above concerns. A new section was added to make it clear that an agency may use Part B funds for inservice training concurrently with placing a first priority child in school (in an interim program, if a component of the child's program is missing). However, the provision of inservice training may not be used as a pre-condition for service to the child.

The intent of Congress with respect to the education of first priority children is both long-standing (dating back to Pub. L. 93-380) and very clear, as reflected in the following statements:

(1) The Congress has a responsibility "* * * to see that all persons are assured equal opportunity. For handicapped children, this means, at the very least, that they must be educated * * * These funds must be focused in such a way that we are assured that handicapped children are provided their right to education." (Congressional Record—Senate, June 18, 1975, p. S10969)

(2) "First priority for spending under the legislation is to provide services for handicapped children who are not now being served. The flexible approach in the Conference Report with respect to the current fiscal year, fiscal year 1977 and fiscal year 1978 will allow for concentrations of moneys so that this priority can be met." (Congressional Record—House of Representatives, November 18, 1975, p H12348)

(3) "There are millions of children with handicapping conditions who are receiving no services at all. And since we must have a place to start, it is appropriate that we give priority to those who are receiving no services at all first, and then try to reach those with the most severe handicaps who have traditionally received only minimal attention second." (Congressional Record—Senate, June 18, 1975, p S10961)

*Comment:* Several commenters requested clarification regarding whether the requirements on the use of funds for priorities apply within or among local educational agencies (e.g., if an agency is serving all of its first priority children, could a State give that agency's entitlement to another agency which is not serving all of its first priority children?).

*Response:* No change has been made. The statute does not permit the State to take away a local educational agency's Part B funds solely because the local educational agency is serving all of its first priority children. For the limited circumstances where a local educational agency's funds may be reallocated, see section 121a.708.

*Other changes:* A new paragraph (c) has been added to section 121a.321, which provides that Part B funds cannot be used for preservice training. This addition was made to implement Congressional intent expressed in Senate Report No. 94-168, p. 34 (1975), in which it was stated that funds for preservice training are available under the training program under Part D of the Act, and that Part B funds should not be used for this purpose.

### INDIVIDUALIZED EDUCATION PROGRAM

The requirements on individualized education programs (IEPs) in Subpart C have been reorganized and redrafted substantially, based largely on comments received. (These sections have been renumbered, starting with section 121a.340.) A summary of these changes is included below:

(1) A definition of IEP has been added which states that the term "IEP" means a written statement on a handicapped child that is developed and implemented in accordance with sections 121a.341–121a.349 of Subpart C.

(2) The proposed section entitled, "Scope" has been deleted and the substance combined with the section on "State educational agency responsibility."

(3) The proposed section on "Local educational agency responsibility" has been replaced by two new sections ("When IEPs must be in effect" and "Meetings").

(4) The section on "Participants in meetings" has been redrafted to adopt essentially verbatim the language in the Act and to add a new paragraph on participation of evaluation personnel.

(5) The proposed section on "Parent participation" has been amended to include specific provisions regarding notifying parents about the IEP meetings.

(6) The substance under the proposed section on "Content of IEP" has been replaced with the statutory language.

(7) The proposed section on "Private school placements" has been reorganized into two sections to conform to the two groups of private school handicapped children in Subpart D, and has been expanded to spell out in more detail the responsibilities of State and local educational agencies in administering this provision.

(8) A new section was added, entitled, "IEP—accountability."

### TIMING OF IEP MEETINGS (§§ 121a.342–121a.343)

*Comment:* Many commenters felt that the final rules should provide more flexibility to agencies in terms of when IEP meetings are conducted.

*Response:* The following changes were made in the proposed rules in an attempt to clarify this provision. First, the regulations now specify the dates on which IEP's must be in effect (October 1, 1977, and the beginning of each school year thereafter). Second, except for new handicapped children (those initially evaluated after October 1, 1977), the timing of meetings to develop, review and revise IEPs is left to the discretion of each agency. (For a new handicapped child, a meeting must be held within thirty days of a determination that he or she needs special education.) The regulations are flexible on the schedule to be followed by public agencies in meeting the above dates.

### PARTICIPANTS IN IEP MEETINGS (§ 121a.344)

*Comment:* A number of commenters recommended that personnel from specific disciplines be participants at IEP meetings (e.g., physicians, health care personnel, psychologists, and representatives from other agencies, such as Head Start). Some commenters felt that the meetings should include all direct service personnel who work with a handicapped child. Other commenters suggested cutting back on the number of people who participate.

*Response:* The final regulations only require the participants listed in the statute, except in the case of a child who has been evaluated for the first time. (*NOTE:* Participation of evaluation personnel in IEP meetings is covered under the next comment-response sequence.)

Generally, having a large group of people at an IEP meeting may be unproductive and

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very costly, and could essentially defeat the purpose of insuring active, open parent involvement.

While it is necessary to insure that all direct services personnel who work with a handicapped child are informed about and involved in implementing the child's IEP, this does not mean that they should attend the IEP meetings. The mechanism for insuring the involvement of all IEP implementers is left to the discretion of each agency (e.g., the child's teacher, or principal, or supervisor could have that responsibility). However, this is a basic administrative procedure which can be handled outside of the context of the IEP meeting.

The statute does not require all IEP implementers to be involved in the meetings. In fact, the definition of IEP in section 602(19) of the Act includes only four people (e.g., a special education provider or supervisor, the teacher, the parent, and the child, where appropriate). Moreover, it was the intent of Congress that IEP meetings generally be small. This position is reflected in the following statement by Senator Randolph in the June 18, 1975 Congressional Record:

In answer to my colleague, it was the intent, and I believe, I can speak for the subcommittee and the committee in this matter, that these meetings * * * be small meetings; that is, confined to those persons who have, naturally an intense interest in a particular child, i.e., the parent or parents, and in some cases the guardian of the child. Certainly the teacher involved or even more than one teacher would be included. In addition, there should be a representative of the local educational agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children.

These are the persons that we thought might well be included. That is why we have called them "individualized planning conferences". We believe that they are worthwhile, and we discussed this very much as we drafted the legislation.

While very large IEP meetings might generally be inappropriate, there may be specific instances where additional participants are essential. In order to enable other persons to be included, the Office of Education retained a provision from the proposed rules which authorized the attendance of "other participants, at the discretion of the agency or parents."

*Comment:* Some commenters recommended that members of the evaluation team participate in IEP meetings.

*Response:* A new paragraph has been added which states, in effect, that an evaluation person must participate in any IEP meetings conducted for handicapped children who have been evaluated for the first time (i.e., the preplacement evaluation required under section 121a.531 of Subpart E). Since the meeting is intended to develop an education program for the child, it is essential that someone at the meeting be familiar with the child's evaluation.

*Comment:* Several commenters recommended that the representative of the agency be qualified in the disability area in which the IEP is written.

*Response:* A comment has been added following section 121a.344 which suggests (but does not require) that either the teacher or the agency representative should be qualified in the area of suspected disability. At the time of the meeting, the public agency may not yet have hired a person qualified to provide special education with respect to that suspected disability.

### PARENT PARTICIPATION (§ 121a.345)

*Comment:* Some commenters stated that documenting efforts to involve parents would be difficult and time consuming. One commenter felt it was important to retain the general statement requiring agencies to involve parents, but recommended that the details in the parent participation section be deleted from the final regulation. Another commenter recommended that the section be dropped because it is not required in the law and is "* * * utterly paternalistic. If a local education agency is foolish enough to keep inadequate records on transactions with parents, it alone stands in jeopardy; there is no damage to parents or to handicapped children."

*Response:* The comments have not been adopted. The Office of Education believes that it is important to retain this section in the final regulations, for the following reasons:

First, the section provides rules that allow agencies to proceed in conducting IEP meetings in cases where parents cannot or will not attend. Without this authorization, the IEP process might come to a halt in some cases, since the law states that an IEP must be developed at a meeting with the parents.

Second, the section is designed to protect agencies by setting the conditions under which they can proceed.

Third, the section is designed to protect the rights of the parents. The Congress intended that IEP meetings be utilized as an extension of the procedural protections guaranteed under Pub. L. 93-380. However, if the regulations provided an authorization for agencies to proceed without the parents, there is a potential problem that the authorization (without documentation) might be inappropriately applied in individual cases, which could result in parents' rights not being protected.

*Comment:* A few commenters suggested using surrogate parents if a child's parents could not attend an IEP meeting. One commenter recommended adding a provision to enable the parents to designate a person to represent them at a meeting.

*Response:* The Office of Education elected not to write regulations on either of these suggestions.

First, a surrogate parent is appointed only in accordance with the procedural safeguards in Subpart E. The provision was not meant to apply in situations when parents are unwilling to participate, or when an agency makes unsuccessful efforts to communicate with a known parent. A surrogate parent is appointed only when the parents are unknown, unavailable or the child is a ward of the state. However, a surrogate parent appointed under appropriate circumstances would attend the IEP meetings and represent the child in all matters relating to the provision of a free appropriate public education to the child.

Second, with respect to parent designated representatives, the Office of Education does not feel that any change in the regulation is warranted. Parents unable to attend an IEP meeting, who are interested enough in their child's education to seek a third party representative, would have direct input in developing the child's IEP through individual or conference telephone calls or other methods authorized under paragraph (c) of section 121a.345.

*Other changes.* A new paragraph (f) has been added to require that parents be given a copy of the IEP on request. This should help to insure that the parents are fully informed of the program for their child, and will assist them in participating in future meetings on the IEP.

### CONTENT OF IEP (§ 121a.346)

*Comment:* Hundreds of commenters responded to this section. Some commenters requested that additional services or other items be added. Other commenters recommended that the section be sharply cut back, because they felt that this went unnecessarily beyond the items listed in the statute. Many of the commenters wanted the specific service areas they represent added to the list of services to be provided in the IEP. Others felt that this went unnecessarily beyond the items listed in the statute.

*Response:* The Office of Education has elected to amend this section by adopting substantially verbatim the language from section 602(19) of the statute. The regulation retains one clarification from the proposed rules, that the individualized education program must include related services to be provided to the child, as well as special education and the extent to which the child can participate in regular education programs. However, given the controversy over this section and whether it is appropriate to add items not specifically covered in the statute, the Office of Education has decided that some experience operating under the statute would be useful before considering whether further regulations on this point would be appropriate.

### IEP—ACCOUNTABILITY (§121a.349)

*Comment:* In the preamble to the proposed rules, a statement was made that the IEP is not a legally binding document. Many commenters recommended that this statement should be included in the body of the final regulations. Other commenters felt that the statement needed to be clarified.

*Response:* The Office of Education has added a new section, which states, in effect, that each public agency must provide special education and related services in accordance with a handicapped child's IEP. However, Part B does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

### COLLECTIVE BARGAINING

*Comment:* Numerous commenters recommended that the regulations deal with the fact that the required participation of teachers (and other agency staff) in the meetings to develop IEPs would require modification of collective bargaining agreements. Some commenters urged that the regulations require additional compensation for teachers to participate in these meetings, prescribe or limit any after-school-hours participation, and specify arrangements for relieving teachers from classroom duties for the meetings.

*Response:* No change has been made in the regulation. The requirement for teacher participation in developing IEPs is statutory. The Commissioner understands that collective bargaining agreements and individual annual contracts for teachers vary greatly among local educational agencies and may or may not deal with additional duties and compensation for after-hour activities. In some instances, especially in urbanized and highly unionized areas, collective bargaining agreements may have to be renegotiated to cover employee participation in IEPs. However, this is an area which is solely within the authority of the public agency and its employees (and their union representative, if any). It would be inappropriate and beyond the scope of the Commissioner's authority to prescribe how this requirement must be met. Where collective bargaining agreements must be modified, the public agency must negotiate the appropriate modifications to comply with the statute. The public agency is also responsible for insuring that the IEP meetings are conducted at a time reasonably convenient to parents. (In some cases this may be during school hours; in others, after hours.) The agency also must make its own arrangements for covering classrooms when teachers are absent.

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### DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY

The direct services provision of this subpart includes sections on (1) use of local educational agency (LEA) funds, (2) nature and location of services, (3) use of the State's (SEA's) entitlement, and (4) a State matching requirement.

The section on the use of LEA allocations (renumbered section 121a.360) has been redrafted to combine the proposed paragraphs (a) and (b) into a single paragraph. This paragraph sets out the conditions under which an SEA may use an LEA's entitlement.

A new paragraph (b) has been added to section 121a.360, which states that in meeting the requirements of this section, the SEA may provide special education and related services directly, by contract, or through other arrangements.

A new paragraph (c) has been added, which repeats the statutory provision that the excess cost requirement does not apply to State educational agencies.

Section 121a.360 (Nature and location of services) has been amended to correct an error made in the proposed rule. The proposed regulation stated that the least restrictive environment (LRE) provisions do not apply when the SEA provides direct services. The amended rule now states that the manner in which the education and services are provided must be consistent with the requirements of this part (including the LRE provisions).

The regulation on "State matching" was not substantially changed. However, a comment was added after this section to make it clear that the requirement would be satisfied if the State can document that the amount of State funds expended on each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

*Comment:* In the preamble to the proposed rules under the direct services provision, a point was made that an LEA would not be in compliance with the section 504 regulations if that agency did not make available a free appropriate public education (FAPE) to all of its handicapped children. A commenter, in responding to this statement, pointed out that the term FAPE has different meanings under section 504 and Pub. L. 94–142; and, therefore, an LEA would not have to meet the requirements of Pub. L. 94–142 in order to be in compliance with section 504.

*Response.* Under Part B, "FAPE" is a statutory term which requires services to be provided in accordance with an IEP. However, under the section 504 regulations, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement. (NOTE.—A more detailed description of the relationship between section 504 and Pub. L. 94–142 is included in this appendix.)

*Other changes:* A new section 121a.372 has been added to implement section 611(c)(3) of the Act. This section provides that the nonsupplanting requirement does not apply to the State's expenditure of its allocation beginning with funds appropriated for Fiscal Year 1979 and for each following fiscal year.

### COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

#### GENERAL

The proposed rules in this section created some controversy over the amount of detail contained in the regulations. Comments ranged from requests for more specificity to suggestions that everything be deleted except the statutory language.

The statute is very clear in requiring that a "comprehensive system of personnel development" be implemented in each State. Since this is a broad requirement, challenging each State to reach out to the expansive community of agencies involved in preparing personnel to educate the handicapped, many of which are private and not under the control of the State, it was felt that a regulation was needed that would provide sufficient information for the State and involved agencies to understand their responsibilities in achieving compliance.

#### SCOPE OF SYSTEM (§ 121a.380)

*Comment:* A commenter suggested that inservice education be available to all special, regular, and related service personnel.

*Response:* Paragraph (a) of section 121a.380 was changed to read "the inservice training of general and special educational instructional, related services, and support personnel."

*Comment:* A commenter suggested that all personnel preparation services be conducted in accredited institutions granting advanced degrees and that "no less than ten percent of the money under this Act be contracted to institutions of higher education." Another commenter recommended the earmarking of a percentage of funds for staff and program development.

*Response:* No change has been made in the regulations. The Office of Education believes that each State must have maximum latitude in decisions regarding the types of facilities and personnel that are used to implement the comprehensive system of personnel development.

With respect to targeting funds for training, the Office of Education feels that such a step would be inappropriate at this time.

Part B is a unique Federal statute in that it imposes requirements on States which must be implemented, regardless of the amount of Federal funds available. Given the scope and magnitude of the law, the Office of Education believes that each State should have maximum latitude in terms of how its Part B funds are used to implement the various statutory provisions, subject, of course, to the priority requirements in Subpart C.

#### DEFINITION OF "APPROPRIATELY AND ADEQUATELY PREPARED AND TRAINED" (PROPOSED §121a.261)

A number of comments were received on the definition of "appropriately and adequately prepared and trained" which was in § 121a.261 of the proposed rules. The definition has been deleted in the final regulations. Instead, the term "qualified" is used, as defined in § 121a.12.

*Comment:* A commenter suggested that nationwide certification requirements be mandated to allow for the mobility of personnel.

*Response:* No change has been made. The intent of the Act is to insure that all personnel necessary to carry out the purposes of the Act are qualified. The Act does not authorize the establishment of national certification standards.

*Comment:* A commenter suggested that early childhood be required as an area for certification.

*Response:* No change has been made. These personnel must be included under the State's comprehensive personnel development system.

*Comment:* Several commenters expressed the belief that certification should not be required for all personnel directly serving the handicapped, or that such a requirement would result in great expense for the State. Still others felt that competency based systems should be used as opposed to the requirement for certification, registration, or licensing.

*Response:* The statutory language "appropriately and adequately prepared and trained" has been interpreted, by use of the term "qualified," to mean certification, registration, or licensing. These are commonly accepted procedures for determining if personnel are "appropriately and adequately prepared and trained."

#### PARTICIPATION OF OTHER AGENCIES AND INSTITUTIONS (§ 121a.381)

The comments on the level and intensity of the "participation" required in this section ranged from the belief expressed that special meetings on components of the state plan are not required in the Act, therefore the "participation" envisioned in section 121a.381 should be eliminated, to the suggested requirement that organizations not only have an opportunity to participate, but that they "must participate." The comprehensive system of personnel development is such a specialized aspect of the Act, necessarily involving agencies not under the jurisdiction of the State that "participation" is fully warranted, though not mandated in the statute. Thus, the regulations set a requirement for the State to insure that those agencies with an interest in the preparation of personnel for the education of the handicapped have an opportunity to participate fully in the development, review, and updating of the system. This is a reasonable requirement, especially considering the critical effect the system will have on those agencies preparing the personnel. Rather than a burden on the State, the "participation" should provide the direct opportunity for the State to encourage the development of quality personnel preparation programs, a factor essential to the provision of a "free appropriate public education."

*Comment:* Several commenters suggested that "representatives from each group be included in the planning" as well as parents. One commenter suggested that disability categories and groups be listed in the proposed rule.

*Response:* The regulation has been altered to include representatives of handicapped and parent organizations. This wording should be sufficient to involve all relevant groups.

*Comment:* A commenter suggested the addition of a subsection (3) to section 121a.381(b) that would require the annual program plan to include a description of agency responsibilities with respect to research and evaluation of exemplary programs that could be implemented in local educational settings.

*Response:* Sections 121a.385 and 121a.386 have been modified to classify agency responsibilities.

#### INSERVICE TRAINING (§ 121a.382)

*Comment:* There were a number of contrasting points of view and suggestions on this section, ranging from requests to mandate greater detail in the proposed rules, to the suggestion that the section be deleted altogether. Those proposing greater detail suggested that specific knowledge and areas of learning be emphasized and that teachers be trained "by having them work one-to-one with specialists" and that "inservice training be mandated at the local level, a county being the largest unit possible, to prevent the State from using the money for ineffectual regional workshops." Also, there were suggestions that where academic credit is to be made available that this be done

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only in institutions of higher education with State approved programs.

On the other extreme there were suggestions that this section "exceeds statutory requirements" and "federal rules should not say how a task is accomplished" and "(state) provides adequate training and inservice and does not need more obstacles and regulations."

*Response:* The statute clearly requires inservice education as a central part of the comprehensive system of personnel development and it is appropriate for the rules to detail the nature and extent of the inservice education that is required. This has been accomplished through the outlining of procedures which define inservice education, its parameters, and relationship to required needs assessments. However, the rules do not define the specific nature of the training to be accomplished. Thus, the rules have been designed to outline the foundation for an adequate program of inservice education, without stifling the creativity of State and local personnel in their efforts to plan and implement such a system.

*Comment:* A commenter suggested that the statement "in cooperation with institutions of higher education" be inserted in section 121a.383(b)(1).

*Response:* No change has been made. However, involvement of institutions of higher education is required under § 121a.381(a).

*Comment:* A number of commenters suggested the addition of specific disciplines and professionals to this section, constituting an itemized list of personnel to be trained or involved in the review of training needs.

*Response:* No change has been made. The State's plan must include all personnel who need training.

*Comment:* Several commenters suggested wording changes designed to clarify the text of the proposed rule on inservice training.

*Response:* Changes were made where necessary to bring the regulation into conformity with current usage.

*Comment:* There were a number of suggestions concerning the financial arrangements for conducting inservice training. Some commenters advocated the funding of parent groups to conduct inservice training. Others suggested financial support for trainees involved in their programs. One commenter urged that the rule allow for contracting with other than non-profit organizations. One suggested contracts with institutions of higher education to carry out personnel development programs. Another suggested incentives for teacher participation, including released time and college credit. One suggested that inservice be provided during contract time, not involving extra hours.

*Response:* No substantive changes have been made. All of the suggestions in the above comments are authorized under these regulations.

### PERSONNEL DEVELOPMENT PLAN (§ 121a.383)

*Comment:* Several commenters asked for special attention to physical education and service delivery models which take into account problems of rural families.

*Response:* No change has been made. Specialized needs in physical education and the unique aspects of providing services in rural settings should be addressed as appropriate in the needs assessment and plan.

*Comment:* One commenter objected to including preservice training under this section.

*Response:* No change has been made. The term "inservice" education is used in the Act. However, since the Act clearly requires that a "comprehensive system of personnel development" be developed, such a system must include the consideration of preservice training.

NOTE.—The data required in sections 121a.124 and 121a.126 of Subpart B on the numbers of handicapped children and the kind and number of personnel needed will serve as the uniform data base within the State for the personnel development system under § 121a.383 of this subpart. The data may also be used by institutions of higher education and other nonprofit educational training agencies in submitting personnel preparation applications under Part D of the Act. Section 121f.9 of the regulations under Part D (45 CFR 121f.9) provides as follows:

§ 121f.9 *State personnel needs.*

Each application shall include (a) a statement by the State educational agency of personnel needs for education of the handicapped and a statement by the applicant of how the proposed program relates to those stated needs, and (b) a description of the ways in which the recipient's program goals and objectives relate to the purposes of Part D of the Act.

(20 U.S.C. 1431, 1432, 1434)

### DISSEMINATION (§121a.384)

*Comment:* One commenter suggested that "teachers organizations" be specified as recipients of information.

*Responses:* No change has been made. Teacher organizations are included under the phrase "other interested agencies and organizations."

## Subpart D—Private Schools

The proposed rules created a certain amount of confusion among commenters in distinguishing between handicapped children placed in or referred to private schools by the State or by local educational agencies and handicapped children whose parents choose to educate them in private schools. The major difference between these two groups of children is in who bears the cost of the private school.

A free appropriate public education must be made available to each handicapped child by the public agencies of the State. Subject to the requirements on least restrictive environment, this could include placement in or referral to a private school or facility. Such a placement or referral must be at no cost to the parent.

On the other hand, even if a free appropriate public education is available, the parent may choose not to accept it. The parent may choose to send the child to a private school rather than take advantage of the free public education. If this happens, the Act does not require the State or local educational agency to bear the cost of the private school. For children placed in private schools by their parents, the State and its local educational agencies have a different duty. They must design their program so that handicapped children in those private schools can participate in special education and related services offered by the local educational agencies if the parents of those children so desire.

The regulations have been reorganized to make these distinctions clearer. The first set of sections (121a.400–121a.403) now cover children placed in or referred to private schools or facilities by a public agency in order to provide them with special education or related services. (These sections replace sections 121a.320–121a.323 of the proposed rules.)

Since the "State" includes all of its political subdivisions, the term "public agency" is used, as elsewhere in the regulations, to mean all of the political subdivisions of the State which are responsible for providing special education or related services to handicapped children.

The second set of sections (121a.450–121a.460) apply to handicapped children enrolled in private schools or facilities but who are not placed or referred there by a public agency to receive special education or related services. (These sections replace sections 121a.300–121a.306 of the proposed rules.)

The following comments were made regarding proposed Subpart D. Comments which asked for changes not authorized under the statute are not summarized. (Commenters who are concerned about the cost of room and board as a "related service" are referred to section 121a.302 and the discussion of that section in this preamble.) The comments are arranged in order of the final rules.

### RESPONSIBILITY OF STATE EDUCATIONAL AGENCY (§ 121a.401)

*Comment:* A commenter asked that paragraph (a)(3) be deleted, which required that the special education given to a handicapped child placed by a public agency must meet the education standards of the State educational agency (SEA). The commenter stated that otherwise there would be conflicts between the SEA's standards and those of other agencies, in the day care area, for example.

*Response.* Paragraph (a)(3) cannot be deleted, since it is derived from a statutory requirement. However, it has been revised by using the language of the statute. This will broaden the types of standards that the SEA may apply, and therefore avoid conflict with other mandatory standards. Of course, those standards cannot override the provisions in Part B of the Act.

*Comment:* A commenter asked that provision be made for interstate referrals to private schools and communication among States regarding those referrals.

*Response.* No change has been made in the regulation. Referrals between States are to be handled under existing procedures. Unless a problem develops in this area that seriously interferes with the rights of handicapped children or their parents under Part B, the Office of Education is reluctant to regulate the mechanisms by which the States arrange to provide services.

### IMPLEMENTATION BY SEA (§121a.402)

*Comment:* A commentor suggested that the State educational agency insure the monitoring of private schools, dissemination of standards to them, and involving them in developing State standards, rather than the State educational agency doing it directly.

*Response:* No change has been made. The statute places direct responsibility on the State educational agency to administer and monitor the requirements under Part B. While the State educational agency in many areas need only insure that the Part B requirements are met, monitoring must be done by the agency itself. Dissemination of standards could be done in a variety of ways. Involvement in development of State standards would have to be done directly by the State educational agency if it is the agency that develops those standards.

### PLACEMENT OF CHILDREN BY PARENTS (§ 121a.403)

*Comment:* Commentors were concerned with the effect of this section on the rights of handicapped children in private schools and felt that the section was worded in a manner that would limit those rights.

*Response:* The section has been revised to make it clear that a free appropriate public education (FAPE) must be made available to

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each handicapped child. This would include the development of an individualized education program and placement in the least restrictive environment. Free appropriate public education must be made available at no cost to the parents. If the parents felt that services were not adequate, they may have a due process hearing to show that more or better services must be provided to give their child FAPE. However, if the parents choose not to educate their child in the public school system, they are not required to do so. In that case, the relevant public agency has the remaining duty of offering special education and related services under sections 121a.450–121a.460, but does not have the duty of insuring that the private school meets the requirements of Part B (unless other handicapped children have been placed in or referred to that private school by the agency), or of paying for the cost of the private school. Language has been added to clarify the public agency's duties under sections 121a.450–121a.460.

*Other changes:* Proposed section 121a.323 (Placements in another State) has been deleted. It would have required private schools to meet the standards of both the sending and receiving States. This would have been an unreasonable burden on the receiving State to enforce.

### HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES (§§ 121a.450–121a.460)

*Comments:* A number of commenters felt that clarification was needed in these sections. There was also some concern expressed regarding the State's legal authority to provide services to children enrolled in private schools.

*Response:* The regulations have been amended to conform more closely to those under Title I of the Elementary and Secondary Education Act of 1965 (education of educationally deprived children) (45 CFR, Section 116a.23). As under Title I, a balance is drawn between the statutory requirement to provide services, and the constitutional necessity of avoiding excessive entanglements between public agencies and church-related institutions. It is also important for the Office of Education to have a uniform policy regarding services to private school children under all Federal education programs it administers. The amendments to the proposed rules should serve all of these purposes.

## Subpart E—Procedural Safeguards

This subpart implements the procedural safeguards set forth in the Act, including due process procedures for parents and children, protection in evaluation procedures, least restrictive environment, confidentiality of information, and procedures of the Office of Education.

A substantial number of detailed comments were received on these sections. Many concerned the statute rather than the regulations or did not state what changes in the regulations were desired. Others requested revisions which did not appear to involve substantive changes. Some comments sought substantially more detailed specification of due process rights while others indicated that the statute itself was so detailed in the due process area that the regulations should not go beyond the statute.

As stated earlier in this preamble, the Office of Education's position, while incorporating a number of the suggestions in the final regulations, is still to adopt minimum regulations in this area at this time, review experience under the regulations, and then made a determination as to whether more detailed regulations are required.

## Due Process Procedures for Parents and Children

### DEFINITIONS (§ 121a.500)

*Comment:* Commenters recommended that the phrase "unless it is clearly not feasible to do so" be deleted from the definition of consent and that additions be made to make it clear that consent may be revoked and may not be made a precondition to the child's right to participate in basic educational programs. The effect of deleting the phrase would be to require that a consent is not valid unless the parent is informed in every case of the information relevant to the consent.

*Response:* The phrase has been deleted. The deletion of the phrase will help to assure an informed consent in every case, regardless of the parent's language or other mode of communication. A phrase has been added to make it clear that parents have the right to revoke consent. A separate section 121a.504 states that consent may not improperly be made a precondition of services. While public agencies must obtain consent for preplacement evaluations or for initial placement, a public agency may not coerce parents to consent by withholding or threatening to withhold other regular education services or extracurricular activities unless the parent consents.

*Comment:* Several commenters requested changes in the definition of "evaluation" to indicate that an evaluation must be conducted by qualified personnel, that the findings must be reduced to writing, and that it must take into account the child's assets as well as deficits.

*Response:* No change has been made. The suggestion reagarding qualified personnel is covered under section 121a.532. The Office of Education expects that evaluations will be in writing and that a child's assets will be considered. If a problem develops in this area, the Office of Education will reconsider the necessity for further regulations.

### GENERAL RESPONSIBILITY OF PUBLIC AGENCIES (§ 121a.501)

*Comment:* Commenters suggested that parents have the right to complain and that agencies should be required to respond to them outside of the context of a hearing.

*Response:* No change has been made in the regulation. However, agencies should certainly seek to respond to complaints by informal discussions and negotiations. A comment section has been added which notes that mediation may be useful in some instances. In any case, negotiations may not delay a hearing if a parent has requested it.

### INDEPENDENT EDUCATIONAL EVALUATION (§ 121a.503)

*Comment:* Commenters disagreed as to whether the parent's right to an independent evaluation should be broadened or narrowed.

*Response:* The section has been rewritten to require public agencies to provide parents information, upon request, of where an independent educational evaluation may be obtained. Also, "public expense" has been defined. However, the interpretation in the proposed regulations is retained. The evaluation must be at public expense if the parent disagrees with the evaluation by the public agency, unless the public agency initiates a hearing to show that its evaluation is appropriate. If upheld, the expense of the independent evaluation does not have to be borne by the agency. The independent evaluation must be considered in any hearing.

There are several competing interests which the regulation seeks to balance. The statutory right of the parent to an independent educational evaluation must be preserved. On the other hand, the public agencies should not be asked to bear the costs of unreasonably expensive independent evaluations. Also, for the independent evaluation to be useful, it must meet the same criteria as evaluations conducted by public agencies under this part.

### PRIOR NOTICE; PARENT CONSENT AND CONTENT OF NOTICE (§§ 121a.504–121a.505)

*Comment:* Commenters sought further specificity as to the detail of information provided to parents in the notice. Other commenters felt that the requirements were too demanding. Some commenters asked that consent be required for preplacement evaluation and prior notice for reevaluation; and that consent be extended to include permission for placement. Other commenters sought to delete the consent requirement on the grounds that educational judgments should be final.

*Response:* The basic notice requirements in sections 121a.504 and 121a.505 were not changed. However, the following changes were made in the consent requirements:

(1) Consent was expanded to include permission for initial placement of a handicapped child in a special education program. Many commenters had requested this addition; and the Office of Education agrees that this requirement is as essential as consent for preplacement evaluation.

(2) The proposed consent rule was changed from consent for all evaluations to consent for the initial or preplacement evaluation. This change is essentially consistent with the section 504 final regulations (45 CFR Part 84, § 84.35(a)). The Office of Education agrees with commenters that there is no need to require consent for reevaluation. If a handicapped child is initially placed in accordance with section 121a.504, and if his or her individualized education program is annually reviewed in accordance with section 121a.343 of Subpart C, a requirement is not necessary. However, prior notice would have to be provided.

*Comment:* Commenters were especially concerned that clarification be added regarding procedures for overriding parents' refusal to consent.

*Response:* A subsection has been added to set out procedures for dealing with parental refusal to consent (see section 121a.504(c) and the comment following that section).

The procedures are designed not to interfere with existing State laws which may require consent. Where State law does not require consent, the parent is afforded a due process hearing under this Part. These rules should provide protection to the parent, the child, and the public agency.

### IMPARTIAL DUE PROCESS HEARING (§ 121a.506)

*Comment:* A commenter asked that the regulations specify that the public agency must pay for the hearing.

*Response:* The change requested by the commenter has not been made. Since the statute requires that the public agency must afford parents an opportunity for a hearing, the agency must bear the cost of the hearing, except for paying for parents' representatives and witnesses. However, section 121a.506 has been amended to require agencies to provide parents with information about free or low-cost legal and other relevant services that are available.

### IMPARTIAL HEARING OFFICER (§ 121a.507)

*Comment:* Commenters sought to have three-person panels, including parents, serve as the hearing officials. Some sought to allow and others sought not to allow school board officials from serving as hearing officials. Com-

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menters also asked that lists of hearing officers be required, including their qualifications.

*Response:* A requirement has been added that each public agency keep a list of persons who serve as hearing officers and a statement of their qualifications. This should help to ensure that the requirement for impartiality is met. No other substantive change has been made. A three-person panel could be used under the existing rules, as long as the conditions of impartiality are met. However, a parent of the child in question and school board officials are disqualified under section 121a.508.

### HEARING RIGHTS (§ 121a.508)

*Comment:* Commenters disagreed as to whether hearing rights set forth in the proposed rules should be expanded or restricted. Among the additional rights sought were the right to compel the attendance of witnesses, prohibit the introduction of evidence not disclosed prior to the hearing, allow the child to be present and the hearing to be open to the public at the parents' discretion, and to specify whether the record of the hearing must be free or at reasonable cost.

*Response:* The section has been revised to add rights for any party to prohibit the introduction of evidence not previously disclosed to the other party and for the child to be present and the hearing to be open to the public. The purpose of hearings under this part is to ensure that handicapped children are provided free appropriate public education. Opening up the hearing and the evidence that may be presented should serve to insure that the result of a hearing will be in the best interests of the child. No provision has been added relating to cost. However, it is expected that a copy of any decision would be provided to the parent at no cost.

### HEARING DECISION; APPEAL (§ 121a.509)

*Comment:* A commenter sought to add a requirement that specifies that the hearing officer has the power to order any educational program for the child and that his or her power not be limited to accepting or rejecting the program by the public agency or parent.

*Response:* No change is necessary. The hearing officer has the function to decide what placement is appropriate, if that is the subject of the hearing.

### ADMINISTRATIVE APPEAL; IMPARTIAL REVIEW (§ 121a.510)

*Comment:* Commenters disagreed on whether to reduce or expand the requirements in this section. Some commenters wanted short, specific timelines set out for various actions and specification of the rights that apply at the review level.

*Response:* The section has been revised to specify other duties and powers of the reviewing official, in addition to those already set out. For example, the official may seek additional evidence if necessary, including holding a new hearing and affording the parties an opportunity for written as well as oral argument (at the reviewing official's discretion). The reviewing official must give a copy of the written findings and decision to the parties. These duties and powers are regarded as necessary to insure that a full review will be conducted and that all parties will be informed of the result of the review. Revisions to timelines for any hearing or review are set out in section 121a.512.

### CIVIL ACTION (§ 121a.511)

*Comment:* Commenters wanted the regulations revised to allow for direct appeal to the courts without first using administrative hearing and review procedures if those procedures would be futile, the timeliness or adequacy of the administrative proceedings are being challenged, or a class action is involved. Commenters cited language in the Congressional Record in support of this interpretation (121 Cong. Rec. S20433 daily ed., November 19, 1975).

*Response:* No change has been made. The legislative history cited is nongermane as it was made in reference to the Senate Bill (S. 6) which did not contain the final statutory provision on civil actions. The provision on civil action was added as a Conference substitute. The issue of exhaustion of remedies will be up to the courts to resolve.

### TIMELINESS AND CONVENIENCE OF HEARINGS AND REVIEWS (§ 121a.512)

*Comment:* Commenters wanted clarification of the 45-day time limit for commencing and completing a hearing and review set out in the proposed regulations. They disagreed on whether the time should be shortened or lengthened.

*Response:* The section has been revised to set a 45 day time limit for a hearing and a 30 day limit for a State level review. In both instances, a decision must be reached and mailed to each of the parties within the time limits set. A hearing or reviewing officer may grant specific extensions, at his or her discretion, at the request of either party. The Office of Education believes reasonable outside time limits must be set to insure resolution of any dispute quickly so that the child's special education may proceed. Discretion for specific extensions is consistent with normal judicial and administrative practice.

### CHILD'S STATUS DURING PROCEEDINGS (§ 121a.513)

*Comment:* Commenters suggested a provision be added to allow change of placement for health or safety reasons. One commenter requested that the regulations indicate that suspension not be considered a change in placement. Another commenter wanted more specificity to make it clear that where an initial placement is involved, the child be placed in the regular education program or, if the parents agree, in an interim special placement.

*Response:* A comment has been added to make it clear that this section would not preclude a public agency from using its regular procedures for dealing with emergencies.

### SURROGATE PARENTS (§ 121a.514)

*Comment:* Commenters requested that the regulations clarify when surrogates may be appointed. One reason given was to insure that agencies do not attempt to appoint surrogates when parents are uncooperative or nonresponsive.

*Response:* The section has been revised to make it clear that the requirements for appointing surrogates apply only when no parent can be identified, the agency after reasonable efforts cannot discover the whereabouts of a parent, or the child is a ward of the State. Agencies are not allowed to appoint surrogates when parents are uncooperative or nonresponsive.

*Comment:* Commenters requested that the regulations further specify procedures to be used for the appointment of surrogates, including administrative proceedings with notice to interested parties and the right of interested parties to seek a review of the decision.

*Response:* No-change has been made. State procedures for the appointment of surrogates will be followed. Disagreements about the choice of surrogates may be the subject of a due process hearing under section 121a.506.

*Comment:* A number of commenters suggested that the regulations provide more detail about the qualifications of the surrogates (for example, requiring training and a commitment to becoming acquainted with the child).

*Response:* No change has been made. The Office of Education believes these concerns are covered by section 121a.514(c)(2) which requires that the surrogate have knowledge and skills that insure adequate representation of the child.

*Comment:* A number of commenters were concerned about the legal liability of surrogates. Some commenters wanted the regulations to protect surrogates from any legal liability.

*Response:* No change has been made. The legal liability of surrogates will be determined under State law relating to such matters as breach of fiduciary duty, negligence, and conflict of interest. The Federal government has no authority to limit legal liability.

*Comment:* A number of commenters sought clarification regarding which agency employees could serve as surrogates. For example, one commenter wanted the regulations to indicate whether the head of a State institution could serve as the surrogate.

*Response:* The regulation has been reworded to make it clear that no employee of any agency involved in the education or care of the child may serve as the surrogate parent.

### PROTECTION IN EVALUATION PROCEDURES

Section 612(5)(C) of the Act requires States to establish non-discriminatory testing procedures for use in the evaluation and placement of handicapped children. The requirements for public agencies to follow in carrying out this provision are set forth in sections 121a.530–121a.534 of Subpart E. (These section numbers have been changed to correspond with other number changes in Subpart E.)

The evaluation procedures in the proposed rules have been changed to conform to the corresponding requirements in the final regulations for section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84, § 84.35) and in response to other comments received. (Many of the comments dealing with the language and substance of the proposed evaluation procedures are covered by the above conforming changes.) A summary of the changes in these procedures is included below:

(1) Proposed section 121a.431 ("Evaluation; change in placement") has been replaced with new section 121a.531 ("Preplacement evaluation"). This corresponds to section 84.35(a) of Part 84.

(2) Proposed section 121a.432 ("Evaluation procedures") has been divided into two sections (section 121a.532 "Evaluation procedures" and section 121a.533, "Placement procedures"). The new section on evaluation procedures (a) incorporates essentially verbatim the language of section 84.35(b) of Part 84, (b) adds two additional requirements from section 612(5)(C) of the Act which are not in Part 84 (e.g., the provision on native language, and the requirement that "No single procedure is used as the sole criterion for determining an appropriate educational program for a child"), and (c) requires that the evaluation be made by a "multidisciplinary team * * * including at least one teacher or other specialist with knowledge in the area of identified disability * * *"

(3) The new section on placement procedures incorporates essentially verbatim the language in section 84.35(c) of Part 84. In addition, the section ties the development

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of an individualized education program to the placement procedures.

The following additional comments were made regarding evaluation procedures:

*Comment:* Several commenters felt that the regulations should require State and local educational agencies to develop procedures for the conduct of evaluations. This would make it possible to determine the adequacy of the evaluations and to insure uniformity in basic procedures.

*Response:* A paragraph was added to section 121a.530 (General) which requires the State educational agency to insure that each public agency establishes and implements evaluation—placement procedures.

*Comment:* Several commenters felt that timelines should be set for implementing the evaluation process (e.g., for initial referral to evaluation and placement).

*Response:* No change has been made. The Office of Education has elected to impose very few absolute timelines in the regulations for this part, because of the potential administrative and legal problems they can cause. Imposing timelines can actually delay the provision of a service (for example, if the time periods are regarded as both minimum and maximum times for implementing a procedure).

A child should be evaluated as soon as possible following referral. Any undue delay in providing the evaluation would raise the question of the State and local educational agencies' compliance with sections 121a.128 and 121a.220 (identification and evaluation of all handicapped children).

*Comment:* Some commenters requested clarification regarding whether a reevaluation is needed, as required by proposed section 121a.431(a)(2), if the parents and agency agree that the child should be transferred from a special education program to a full time regular class placement.

*Response:* This specific section has been deleted in the final regulations. However, any changes in a child's placement (including a transfer to a regular class) would not be made until after a meeting is held to review the child's individualized education program in accordance with the requirements under sections 121a.340–121a.349 of Subpart C. If the parents and agency agree that the child no longer needs special education, a reevaluation would not be necessary. Section 121a.531 requires an evaluation before initial placement only. Reevaluations are covered under section 121a.534.

### Least Restrictive Environment

Section 612(5)(B) of the Act requires States to establish policies and procedures to insure that "to the maximum extent appropriate, handicapped children * * * are educated with nonhandicapped children * * *." The regulations for implementing this provision are set out in sections 121a.550–121a.556 of Subpart E.

A new paragraph was added to section 121a.550 which requires the State to insure that all public agencies establish and implement procedures in accordance with the requirements of this subpart. In addition, a new section, entitled "Nonacademic settings" was added. This section is taken from a new requirement in the section 504 regulations (45 CFR Part 84, § 84.34).

#### GENERAL (§ 121a.550)

*Comment:* A number of commenters requested that provisions be made for special support in the regular classroom in order to accommodate handicapped children (e.g., including reducing the pupil-teacher ratio and assigning aides to the room).

*Response:* No change was made, since the statute already authorizes the use of supplementary aids and services as a means of enabling a handicapped child to be educated with nonhandicapped children.

#### CONTINUUM OF ALTERNATIVE PLACEMENTS (§ 121a.551)

*Comment:* Many commenters responded to this requirement. Some felt that terms other than "continuum" should be used (e.g., "range of programs" and "variety of services"). A large number of commenters felt that "continuum" carried negative connotations (e.g., statements were made that the concept undermines the ideals of Pub. L. 94–142, that it implies best-to-worst, etc.). Other commenters felt that it discriminated against residential or private schools, and suggested that efforts be made to counteract this bias.

*Response:* No change has been made in this section. The term "continuum," as with "least restrictive environment" (LRE), is commonly used by agencies, advocates, and parents. However, there is nothing to prohibit an agency from using terms such as those included above in administering these provisions.

As with "LRE," the term that is used is not as important as the basic provision and how that provision is implemented. The purpose of a continuum is to be able to accommodate to differences between handicapped children in terms of the degree of special assistance they need to receive a free appropriate public education. This matter was dealt with directly in the June 26, 1975 Report of the House of Representatives on HR 7217 (H. Rept. No. 94–332, p. 9):

The Committee understands the importance of providing educational services to each handicapped child according to his or her individual needs. These needs may entail instruction to be given in varying environments, i.e., hospital, home, school or institution. The Committee urges that where possible and where most beneficial to the child, special educational services be provided in a classroom situation. An optimal situation, of course, would be one in which the child is placed in a regular classroom. The Committee recognizes that this is not always the most beneficial place of instruction. No child should be denied an educational opportunity; therefore, H.R. 7217 expands special educational services to be provided in hospitals, in the home, and in institutions.

When it is clear that, because of the nature or severity of a child's handicap, the child must be educated in a setting other than the regular class, it is appropriate to implement such a placement. However, the LRE provision is also designed as a rights provision to protect against indiscriminate placement of a child in a separate facility solely because the child is handicapped and not because special education is needed in that type of setting.

Even with respect to severely handicapped children, it may be possible to meet the "regular education setting" goal by having a separate class or separate wing in a regular school building.

#### PLACEMENTS (§ 121a.552)

*Comment:* Many commenters were concerned that there may be an overzealous implementation of the LRE provision without regard to the needs of individual handicapped or nonhandicapped children.

*Response:* No substantive change has been made in this section, because the Office of Education feels that the section includes necessary safeguards to insure protection against the above concerns. With respect to those concerns, the overriding rule is that each child's placement must be determined annually and be based on his or her individualized education program.

With respect to concerns about the harmful effect of placing handicapped children in regular classes, the analysis of the section 504 regulations indicates: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *" (45 CFR Part 84—Appendix, paragraph 24)

*Comment:* A commenter requested that a new provision be added which requires State and local educational agencies to utilize community-based early childhood development programs for 3–5 year old handicapped children. The main intent of the new provision is "aimed solely at assuring maximum appropriate mainstreaming."

*Response:* No change was made in the section. The existing provisions are considered to be adequate to cover the intent of this request.

### Confidentiality of Information

#### NOTICE TO PARENTS (§ 121a.561)

*Comment:* Commenters asked that the detailed content of the notice requirements be deleted as excessive.

*Response:* No change has been made. The Office of Education believes the provisions require that States provide necessary information to inform parents about the type of information collected about handicapped children to meet the requirements of this part.

#### ACCESS RIGHTS (§ 121a.562)

*Comment:* Commenters requested that this section be expanded to require that access to records be given in no case less than five days prior to meetings to develop individualized education programs or any hearing and to permit authorized representatives of the parent to inspect the record. A commenter felt the 45-day outside time limitation could be misinterpreted to mean an agency need not comply at all after 45 days from the date of the request.

*Response:* Language has been added to make it clear that an agency must comply with a request for access before any meeting regarding an individualized education program. This will help insure that interested parents are able to familiarize themselves with their child's records prior to any meeting and be able to participate more knowledgeably. The prohibition against unnecessary delay places an obligation on the agency to make the records available in a timely manner so that the Office of Education does not believe it is necessary to specify a specific time limitation. Section 121a.562 has been amended to give parents the right to have an authorized representative inspect their child's education records.

The 45-day time limitation is not subject to the misinterpretation the commenter fears. This language is from the Family Educational Rights and Privacy Act, section 438 of the General Education Provisions Act (specifically section 432(a)(1)(A)), to which these regulations are tied (by statute).

#### FEES (§ 121a.566)

*Comment:* A commenter felt the first copy of a record should be given free upon request from the parents.

*Response:* No change has been made. The prohibition against charging a fee if it would effectively prevent the parents from inspecting and reviewing the record is based on a requirement in the Family Educational Rights and Privacy Act, to which these regulations are limited by statute (section 612

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(2) (C)). Agencies may of course adopt policies of making copies available free of charge and are encouraged to do so.

### HEARING PROCEDURES (§ 121a.570)

*Comment:* A commenter requested clarification of who conducts a hearing.

*Response:* The section states that the procedures under § 99.22 (the hearing procedures in the regulations for the Family Educational Rights and Privacy Act) be used. Section 99.22(b) states the hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

### CONSENT (§ 121a.571)

*Comment:* Commenters requested that "advanced students," "persons acting as practicum advisors," and researchers be given access to records without consent.

*Response:* No change has been made. The Family Educational Rights and Privacy Act specifically lists parties and conditions where records may be released without parental consent.

### SAFEGUARDS (§ 121a.572)

*Comment:* A commenter requested a list of positions rather than a list of names of employees who may have access to personally identifiable information.

*Response:* The requirement has been modified to require a list of names and positions to more fully inform parents and the public of the categories of individuals given access to data as well as the specific individuals who may have access.

### DESTRUCTION OF INFORMATION (§ 121a.573)

*Comment:* A number of commenters were concerned about the destruction requirements. The principle concern was that detailed records might be needed by the handicapped individuals to show proof of need for further services from other agencies. One recommendation was that the parent and child be notified of the existence of the records at the time of graduation and informed that they would be destroyed only upon request of the parent or child. Another commenter suggested that records be maintained, but that parents be given the option to have them destroyed.

*Response:* The requirement has been revised to permit the parents to request that the information be destroyed and to require the public agency to inform the parents of the destruction option and their right to have the records destroyed upon request. The notice would normally be given at the time a child graduates or otherwise leaves the agency. The purpose of the destruction option is to insure that nonessential records about a child's behavior, performance, and abilities, which may possibly by stigmatizing and are highly personal, are not kept after they are no longer needed for educational purposes. Destruction of these records is the best protection against improper or unauthorized disclosures. However, the handicapped child or his or her parents may need certain records for other purposes (such as proof of eligibility for benefits).

*Comment:* Commenters asked that notice be given to a child who has reached the age of majority.

*Response:* No change has been made. Section 121a.574 requires the State educational agency to have policies and procedures regarding children's privacy rights. Where education records are maintained by an agency covered under the Family Educational Rights and Privacy Act, these rights must include transfer of the rights of parents to the child when he or she reaches 18 or the postsecondary education level.

*Other Changes:* The regulations have been revised to make it clear that the records covered under this Act are the same as the type of records covered under the Family Educational Rights and Privacy Act. Consistency in coverage is necessary to avoid undue administrative burdens on public agencies covered by both laws.

## OFFICE OF EDUCATION PROCEDURES

*General:* The requirements in these sections largely repeated the statute. Perhaps for this reason, few comments were received on the Office of Education procedures.

### WAIVER OF REQUIREMENT REGARDING SUPPLEMENTING AND SUPPLANTING WITH PART B FUNDS (§ 121a.589)

*Comment:* A commenter requested that the special study to determine if a waiver of the requirement should be granted include a review of whether grievance procedures are operational. Other commenters disagreed on the need for this study.

*Response:* A requirement has been added to have the study cover the adequacy of the State's due process procedures, as this is an important part of insuring that grievances are heard and to determine if parents and other parties are satisfied with the adequacy of the State's programs for handicapped children.

### WITHHOLDING PAYMENTS (§ 121a.590)

*Comment:* Commenters asked for definitions of "substantial compliance" and "failure to comply." Commenters also urged that the Office of Education, the Office for Civil Rights, and Departmental audit officials apply the same criteria.

*Response:* No change has been made. The Office of Education believes these terms will have to be defined on a case-by-case basis:

The Office of Education and the Office for Civil Rights will coordinate and cooperate in enforcing requirements under this Part and Part 84 (the regulations for section 504 of the Rehabilitation Act of 1973) where identical requirements are involved. The Office of Education will make every effort to insure that auditing officials understand and apply any criteria used by program officials.

## SUBPART F—STATE ADMINISTRATION

This subpart has been expanded with requirements set out under the major headings: State Educational Agency Responsibilities, Use of Funds, and State Advisory Panel.

## STATE EDUCATIONAL AGENCY RESPONSIBILITIES

Provisions on State educational agency responsibilities have been redrafted (and relocated from proposed section 121a.34) in response to comments, to better summarize general administrative and supervisory responsibilities in section 612(6) and other sections of the Act. A section on complaint procedures, which was included in previous regulations for Part B (prior section 121a.14) and inadvertently not included in the proposed regulations has been added.

*Comment:* Commenters requested addition of a new section on State educational agencies' responsibilities for monitoring, evaluation, and enforcement activities to insure compliance throughout the State with the requirements of this part. The commenters made specific suggestions for implementing such a section, including collection of data, conduct of on-site visits, audit of fund utilization, comparison of written individualized education programs with programs actually provided, meetings with parents and parent groups, public hearings, development of detailed criteria for evaluating program quality and effectiveness, and detailed procedures for enforcing requirements against noncomplying agencies.

*Response:* A new section has been added to require each State educational agency to develop procedures and specific timelines for monitoring and evaluating public agencies involved in the education of handicapped children. These are minimal requirements. Adoption of the other suggestions made by the commenters is encouraged but not required.

### ALLOWABLE COSTS (§ 121a.621)

*Comment:* A number of commenters requested that the limitation on State administrative funds be raised and that provisions be added to allow local educational agencies to use funds for administrative costs.

*Response:* No change has been made on the State limit as it is a statutory limitation.

*Comment:* Commenters requested that the regulations require each State educational agency to use its funds for specific purposes. One recommendaiton was that ten percent of the administrative funds be used to train persons in local communities to assist and represent parents and to prepare and disseminate to parents information about their rights under these regulations. Another was that they be used to disseminate instructional material.

*Response:* No change has been made. The Office of Education does not believe it is appropriate to dictate to States how to use their limited administrative funds.

## STATE ADVISORY PANEL

### ESTABLISHMENT (§ 121a.650)

*Comment:* One commenter recommended that local panels be required.

*Response:* No change has been made. The statute only requires a State advisory panel. A State may, of course, decide to establish local panels.

### MEMBERSHIP (§ 121a.651)

*Comment:* A substantial number of commenters requested additions to the list of representatives to be included on the panel, including professional groups, legal advocacy groups, and employees of State and local agencies. Some commenters recommended that handicapped individuals or their parents make up specific percentages of the panel.

*Response:* A provision has been added to make it clear that a State may expand the advisory panel to include additional persons in the groups listed (which are statutory) and representatives of other groups. The Office of Education does not believe it is appropriate to prescribe specific percentages, as the States should have some discretion to determine the proper mix of representatives. A comment has been added to indicate factors a State may consider in determining balanced membership of the panel.

### ADVISORY FUNCTIONS AND ADVISORY PANEL PROCEDURES (§§ 121a.652—121a.653)

*Comment:* Commenters recommended that the regulations indicate that the panel must comment publicly on the State annual program plan as well as on any rules and regulations regarding education of handicapped children, review annual evaluations, and act as ombudspersons to hear complaints.

*Response:* A change has been made to require the panel to comment on the annual program plan. The annual program plan is an extremely important document and this addition makes it clear that the advisory panel must be involved in reviewing it. The other recommendations are legitimate activities but not ones the Federal government believes should be required by these regulations at this time.

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*Comment:* Commenters requested that the regulations provide that panel members be reimbursed for reasonable and necessary expenses for attending meetings and performing duties.

*Response:* This change has been made. It is reasonable to require reimbursement for expenses so that persons will be able to participate without financial sacrifice.

## SUBPART G—ALLOCATIONS OF FUNDS; REPORTS

### ALLOCATIONS

This major section of Subpart G is entirely statutory; therefore, there are no comments of substance on which to respond.

### REPORTS—ANNUAL REPORT OF CHILDREN SERVED (§§ 121a.750–121a.754)

The following comments were received regarding the annual report by the States of the number of children receiving special education and related services. This report is the basis for each State's allocation of funds under Part B, and serves as a mechanism for the Commissioner to meet some of his reporting requirements to Congress under section 618 of the Act. Some commenters recommended changes that would require amendment of the Act. These have not been summarized except where further explanation seemed to be useful.

### AMOUNT OF INFORMATION REQUIRED IN THE REPORT

*Comment:* Commenters varied in their views on what information should be included in the report. It was suggested that additional information be collected for compliance purposes. Objections were made to the requirement for reporting information by disability category, and for reporting the 0-2 year old population. On the other hand, some commenters recommended that additional categories be added to the report, particularly for deaf-blind children and for multihandicapped children.

*Response:* Two categories of handicapped children have been added to the report—one for multihandicapped children and one for deaf-blind children. These terms are defined in section 121a.5 of Subpart A. No other changes have been made on the amount of information to be reported.

The additional categories should help to insure that no handicapped child is counted more than once, since the States will not have to decide in which of two or more disability categories to count a multihandicapped child. The changes conform to existing reporting requirements used by the States.

The annual report of children served is not a compliance document. It is only used to determine each State's allocation and to assist the Commissioner in meeting his reporting requirements to the Congress under section 618. Under section 611 of the Act, allocations are based on the number of handicapped children in each State receiving special education and related services. Compliance with requirements such as "least restrictive environment" will be achieved through other mechanisms, including the State's annual program plan, the local educational agency's application, and monitoring by the State educational agency and the Office of Education.

As explained in the preamble to the proposed rules published in the FEDERAL REGISTER on September 8, 1976, the report requirements are the minimum needed by the Commissioner to carry out the Act. (See 41 FR 37814.) While the Commissioner is concerned about the possible harmful effects of "labeling" children, the Act requires that the Commissioner report a substantial amount of information, to Congress by disability category. For this reason, and for the other reasons stated in the September 8, 1976, FEDERAL REGISTER, there appears to be no workable alternative to retaining the categories in the States' annual reports. The various disability categories, as well as the requirements to use them in the Commissioner's reports to the Congress, are statutory.

### WHO MAY BE COUNTED

*Comment:* Commenters disagreed as to whether handicapped children should be counted if their special education is paid for solely from private sources or solely from Federal funds (such as children living on military bases). Some thought that only publicly-funded special education should qualify, while others argued that since all children have a right to a free appropriate public education the source of funding (other than the parent) should not matter.

*Response:* Section 121a.753 has been amended to provide that handicapped children (including such children in Head Start or other preschool programs) may be counted only if they (1) are enrolled in a school or program which is operated or supported by a public agency, and (2) receive special education that meets State standards.

A State may not count a child whose special education is paid for solely by the Federal government, unless the child is in one of the age groups 3-5 or 18-21, and there are no local or State funds available for nonhandicapped children in that age group.

Children funded solely by the Federal government would include Indian children whose special education is paid for solely by the Federal government, as well as children on military bases whose education is paid for solely with Federal funds. This rule is consistent with the requirement that a free appropriate public education (FAPE) be made available by the State to each handicapped child. Parents are not required to take advantage of FAPE. If they choose to educate their child outside of the public school system, even though FAPE is available, the State has discharged its responsibility. However, by the same token, the child should not be counted by the State for its allocation if the child is not being provided special education at public expense. The same reasoning applies to Indian children and other children who receive their special education from the Federal government. The rule should serve as an encouragement to States to provide services to all handicapped children, however, since any child provided special education from State or local funds may be counted.

*Comment:* Two other provisions in the regulations were objected to by commenters. The first of these provided that handicapped children "enrolled" in schools to receive special education could be counted as receiving special education. These commenters felt that enrollment did not guarantee actual receipt of services. The second provision stated, in essence, that a child who receives special education may be counted, but not a child who receives only "related services." This was viewed as an overly restrictive reading of the Act.

*Response:* No change has been made in the regulations. While no system is perfect, enrollment is a legitimate way of determining the number of handicapped children receiving special education on October 1 and on February 1, the two dates on which the Act requires the count of children served. It would not be practical to make an actual head count of children in classrooms and other facilities where services are provided.

With respect to children who only receive "related services," this is governed by statutory language. "Related services" are only those "required to assist a handicapped child to benefit from special education." (Section 602(17) of the Act.) If a child does not need special education, there can be no "related services," as that term is defined in the Act. However, section 121a.14 permits a State to define certain services as "special education," if those services are "specially designed instruction to meet the unique needs of a handicapped child." (This is taken from the definition of "special education" in section 602(16) of the Act.)

### REALLOCATION OF LOCAL EDUCATIONAL AGENCY FUNDS (§ 121a.708)

*Comment:* Commenters requested criteria be added for when funds may be reallocated.

*Response:* No criteria have been added as determinations will be made on a case-by-case basis.

## APPENDIX B—INDEX TO PART 121a

ADMINISTRATION

See: Monitoring.
Annual program plan requirements—§§ 121a.112; 121a.134; 121a.138; 121a.141; 121a.142; 121a.145.
Certification of State authority—§ 121a.112.
Direct Service by State educational agency—§ 121a.360.
Local application requirements—§§ 121a.228; 121a.236; 121a.240.
Local education agency definition—§ 121a.8.
State administration—Subpart F.

ADVISORY PANEL (STATE)

Annual program plan requirement—§ 121a.147.
General requirements—§§ 121a.650–121a.653.

ALLOCATIONS

Annual program plan condition of assistance—§ 121a.110.
Application by local agency condition of assistance—§ 121a.180.
Consolidated applications—§ 121a.191.
Count of children—See Reports.
Interior Department for Indian children—§ 121a.709.
Local agency allocation—See Reports.
  Formula—§§ 121a.705–121a.707.
  Reallocation—§ 121a.708.
  Use by the State—§ 121a.360.
Outlying areas—§ 121a.710.
Recovery for misclassified children—§ 121a.141.
State allocation:
  Formula—§§ 121a.701–121a.703; 121a.705–121a.706.
  Hold harmless—§ 121a.704.
  Use for administration—§§ 121a.620–121a.621.
Use of—See other headings.
Withholding—See: Hearings.
  From the local agency—§ 121a.194.
  From the State—§§ 121a.590–121a.593.

ANNUAL PROGRAM PLAN

Approval; disapproval—§ 121a.113.
Certifications—§ 121a.112.
Condition of assistance to State—§ 121a.110.
Contents—§§ 121a.111; 121a.112; 121a.120–121a.151.
Effective period—§ 121a.114.
General requirements—§§ 121a.110–121a.114.
Public participation—See: Public Participation.
Submission by State—§ 121a.110.

APPLICABILITY OF REGULATIONS—§ 121a.2

APPLICATION BY LOCAL AGENCY

Annual program plan requirement—§ 121a.144.
Approval or disapproval by State educational agency—§§ 121a.193; 121a.360.

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Second priority children—amendment of application—§ 121a.324.
Submission by local agency—§ 121a.180.
Condition of assistance to local agency—§ 121a.180.
Consolidated application—§§ 121a.190–121a.192.
Content—§§ 121a.220–121a.240.
Excess costs—See: Excess Costs.
Public participation—See Public Participation.

AUDITS

See: Monitoring.

COMPLAINTS

State educational agency procedures—§ 121a.602.
See: Hearings.

COMPARABLE SERVICES

Local application requirement—§ 121a.231.

CONSENT

Defined—§ 121a.500.
Disclosure of information—§ 121a.571.
Initial placement—§ 121a.504(b).
Placement status during a proceeding—§ 121a.513.
Preplacement evaluation of child—§ 121a.504(b).

CONFIDENTIALITY OF INFORMATION

Annual program plan requirement—§ 121a.129.
Definitions—§ 121a.560.
General requirements—§§ 121a.560–121a.572.
Local application requirements—§ 121a.221.

CONSOLIDATED APPLICATIONS

See: Application of local agency.

COUNT OF CHILDREN

Annual report of children served—§§ 121a.750–121a.754.
Allocations:
  State entitlement—§§ 121a.701–121a.702.
  Local educational agency entitlement—§ 121a.707.
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DEFINITIONS—§§ 121a.4–121a.18

DUE PROCESS

See: Confidentiality of Information.
  Evaluation.
  Hearings.
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Procedures for parents and children—§§ 121a.500–121a.514.

EDUCATION

See: Free Appropriate Public Education.
  Full Educational Opportunity Goal.
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  Personnel Development.
  Physical Education.
  Special Education.
  Related Services.

EVALUATION

Advisory panel function—§ 121a.652.
Annual program plan requirements—§§ 121a.128; 121a.133; 121a.146.
Education programs—§ 121a.146.
Handicapped children:
  Consent required for—§ 121a.504.
  Defined—§121a.500.
  Hearings—See Hearings.
  Independent educational evaluation—§ 121a.503.
  Information on achievement—§ 121a232.
  Notice required—§§ 121a.504–121a.505.
  Protection—§§ 121a.128, 121a.133, 121a.221, 121a.530–121a.534.
  State responsibility—§ 121a.128.
Hearing aids—§ 121a.303.

Individualized education programs—§ 121a.146.
Personnel development—§ 121a.386.
Private school children service needs—§ 121a.452.
State educational agency activities—§§ 121a.146; 121a.601.
Training—See: Personnel development, this heading.

EXCESS COSTS

Generally—§§ 121a.182–121a.186.
Local application requirement—§ 121a.229.
Not applicable to State educational agency - § 121a.360.

FREE APPROPRIATE PUBLIC EDUCATION

See: Individualized Education Programs.
  Related Services.
  Special Education.
  Time Limits and Timetables.
Annual program plan requirements—§§121a.121–121a.122.
Defined—§ 121a.4.
Generally—§§ 121a.300–121a.303; 121a.307.
Initiation or change—See: Notice.
State practice exception—§ 121a.300.
State use of local agency's allocation—§ 121a.360.
Priorities—§§ 121a.320–121a.324.

FULL EDUCATIONAL OPPORTUNITY GOAL

Annual program plan requirements—§§ 121a.123–121a.126.
General requirements—§§ 121a.304–121a.306.
Local application requirements—§§ 121a.222–121a.223.

HANDICAPPED CHILDREN

Defined—§ 121a.5.

Rights

See; Confidentiality of Information.
  Due Process.
  Evaluation.
  Free Appropriate Public Education.
  Hearing.
  Identification, Location, Evaluation.
  Individualized Education Program.
  Least Restrictive Environment.
  Notice.
  Private School Children.
  Special Education.
  Related Services.

HEARINGS

Disapproval of annual program plan—§ 121a.113.
Disapproval of local application—§ 121a.194.
Office of Education procedures—§§ 121a.580–121a.593.
Parents and children:
  Identification, evaluation, placement—§§ 121a.506–121a.514.
  Confidentiality of information—§§ 121a.568–121a.570.
Public hearings before adopting annual program plan—§§ 121a.280–121a.284.
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IDENTIFICATION, LOCATION, EVALUATION

See: Evaluations.
Annual program plan requirement—§ 121a.128.
Local application requirement—§ 121a.220.
Private school children—§ 121a.453.

INDIAN CHILDREN

Application from Secretary of Interior—§§ 121a.260–121a.263.
Count—§§ 121a.753.
Payments to Secretary of Interior—§ 121a.709.

INDIVIDUALIZED EDUCATION PROGRAM

Accountability—§ 121a.349.
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Content—§ 121a.346.
Defined—§ 121a.340.
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First priority children—§ 121a.322.
Free appropriate public education definition—§ 121a.4.
General requirements—§§ 121a.340–121a.349.
Least restrictive environment—§ 121a.552.
Local application requirement—§ 121a.235.
Meetings—§§ 121a.343–121a.345.
Parent participation—§ 121a.344.
Placement—§§ 121a.533; 121a.552.
Private school children—§§ 121a.347–121a.348; 121a.401.
Reevaluation—§ 121a.534,

LEAST RESTRICTIVE ENVIRONMENT

Annual program plan requirement—§ 121a.132.
General requirements—§§ 121a.550–121a.556.
Local application requirement—§ 121a.227.
Nature and location of State services—§ 121a.361.
Nonacademic services and settings—§§ 121a.306; 121a.553.
Physical education—§ 121a.307.
Placement decisions—§§ 121a.513; 121a.533.
Program options—§ 121a.305.

MATCHING—§ 121a.371

MONITORING

Annual program plan requirements—§§ 121a.128(b) (5); 121a.130(b) (2); 121a.135.
Auditing count of children served—§ 121a.754.
Confidentiality of information—§ 121.575.
Identification, location, evaluation—§ 121[illegible] 128(b) (5).
Individualized education programs—§ 121a.130(b) (2).
Least restrictive environment—§ 121a.556.
Private school children—§ 121a.402(a).
State educational agency responsibility—§ 121a.601.

NONDISCRIMINATION

Annual program requirement—§ 121a.150.
Evaluation materials and procedures—§ 121a.530.
Local application requirement—§ 121a.239.
Nonacademic services—§ 121a.306.
Private school children—§ 121a.458.
Program options—§ 121a.305.
Testing materials and procedures—§ 121a.530.

NOTICE

Confidentiality of information—§§ 121a.561, 121a.573.
Individualized education program meeting—§ 121a.345.
Intitiation or change of identification, evaluation, placement, or free appropriate public education—§§ 121a.504–121a.505.
Notice of opportunity for a hearing—See: Hearings.
Notice of procedural safeguards—§ 121a.505.
Public notice of withholding payments—§ 121a.592.

PERSONNEL DEVELOPMENT

Annual program plan requirement—§ 121a.139.
Comprehensive system of personnel development—§§ 121a.380–121a.387.
Included in State support services—§ 121a.370.
Least restrictive environment—§ 121a.555.
Local application requirement—§ 121a.224.
Personnel needs—§§ 121a.126; 121a.228.
Preservice training—§ 121a.321.

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Trained personnel for evaluation materials—§ 121a.532.
Training regarding confidentiality of information—§ 121a.572.
Use of Part B funds for training—§§ 121a.321, 121a.322.

PHYSICAL EDUCATION

Included in special education—§ 121a.14.
Required—§ 121a.307.

PLACEMENTS

See: Evaluation.
Least Restrictive Environment.
Private schools.

PRIORITIES

See: Evaluation.
Indentification, Location, Evaluation.
Annual program plan requirement—§ 121a.-137.
Definitions:
First priority children—§ 121a.320(a).
Second priority children—§ 121a.320(b).
General requirements—§§ 121a.320–121a.324.
Local application requirement—§ 121a.225.
State direct and support services—§ 121a.370.

PRIVATE SCHOOL CHILDREN

Annual program plan requirement—§ 121a.-140.
Confidentiality of information—§ 121a.560.
Cost of residential placement—§ 121a.302.
Handicapped children placed or referred by public agencies—§§ 121a.400–121a.403.
Handicapped children not placed or referred by public agencies—§§ 121a.450–121a.460.
Individualized education program—§§ 121a.-347–121a.348.
Least restrictive environment—§ 121a.554.
Part B applicability to private schools—§ 121a.2.
Physical education—§ 121a.307.

PROCEDURAL SAFEGUARDS

See: Complaints.
Consent.
Hearings.
Notice.
Surrogate Parents.
Annual program plan requirements—§§ 121a.131; 121a.136.
Local application requirement—§ 121a.237.

PUBLIC PARTICIPATION

See: Hearings.
Annual program plan requirements—§§ 121a.120; 121a.137; 121a.280–121a.284.
Local application requirements—§§ 121a.226; 121a.234.
Secretary of Interior application—§ 121a.261.
State advisory panel—§§ 121a.650–121a.654.

RECORDS

See: Confidentiality of Information.
Annual program plan requirement—§ 121a-143.
Comparable services—§ 121a.231.
Count of children served—§ 121a.754.
Excess costs—§ 121a.183.
Individualized education programs—§ 121a-130.
Local application requirement—§ 121a.233.
Parents may examine—§ 121a.502; 121a.562.
Parents not participating in meetings—§ 121a.345.

RELATED SERVICES

See: Free Appropriate Public Education.
Individualized Education Program.
Defined—§ 121a.13.

REPORTS

Annual report of children served—§§ 121a.-750–121a.754.
Local application requirements—§§ 121a.232; 121a.233.
State advisory panel—§ 121a.652.

SPECIAL EDUCATION

See: Free Appropriate Public Education.
Individualized Education Program.
Defined—§ 121a.14.

STATE ADVISORY PANEL

Annual program plan requirement—§ 121a.-147.
General requirements—§§ 121a.650–121a.653.

STATE DIRECT AND SUPPORT SERVICES

Annual program plan requirement—§ 121a.-51.
General requirements—§§ 121a.360–121a.372.

SUPPLANTING

Applicability to State educational agency—§ 121a.372.
Local application requirement—§ 121a.230.
Private schools—§ 121a.460.
Waiver of requirement—§ 121a.589.

SURROGATE PARENTS

Definition of parent—§ 121a.10.
Duty of public agency to assign—§ 121a.514.
Responsibilities—§ 121a.514.
Selection—§ 121a.514.

TESTING

See: Evaluation.

TIME LIMITS AND TIMETABLES

Annual program plan effective period—§ 121a.114.
Evaluation of educational programs—§ 121a.-146.
Free appropriate public education—§§ 121a.-122; 121a.300.
Full educational opportunity goal—§§ 121a.-125; 121a.222.
Hearing decisions—§§ 121.512; 121a.583.
Individualized education programs—§§ 121a.-342; 121a.343.
Public participation in the annual program plan—§ 121a.280–121a.284.
Reevaluation—§ 121a.534.
Report of children served—§ 121a.750–121a.-754.
State monitoring of public agencies—§ 121a.-601.
State review of hearing decision—§ 121a.512.

TRAINING

See: Personnel Development.

USE OF PART B FUNDS

Allocation formulas:
Consolidated applications—§§ 121a.190-121a.191.
Entitlements—§§ 121a.700–121a.710.
Annual program plan requirements—§§ 121a.148; 121a.149.
Department of the Interior (Indian children)—§ 121a.262.
Excess costs—§§ 121a.182–121a.186.
Local application requirement—§ 121a.238.
State and local educational agencies:
Free appropriate public education—§§ 121a.301–121a.302.
Full educational opportunity goal—§ 121a.-304(b).
Priorities—§§ 121a.320–121a.324.
Private school children—§§ 121a.450-121a.-460.
State educational agencies:
Allowable costs—§ 121a.621.
Federal funds for State administration—§ 121a.620.
Matching—§ 121a.371.
State advisory panel—§ 121a.652.
Use of local allocation for direct services—§§ 121a.360–121a.361.
Use of State educational agency allocation for direct and support services—§ 121a.-370.
Supplanting—§§ 121a.230; 121a.372; 121a.589.
Training—See: Personnel Development.

5. A new Part 121m is added to read as follows:

## PART 121m—INCENTIVE GRANTS

Sec.
121m. 1 Scope; purpose.
121m. 2 General provisions regulations.
121m. 3 Eligibility.
121m. 4 Application.
121m. 5 Application contents.
121m. 6 Amount of grant.
121m. 7 Participation by children not counted under Part B of the Act.
121m. 8 Excess costs.
121m. 9 Administration.
121m. 10 Annual evaluation report.

AUTHORITY: Sec. 619 of Pub. L. 91-230, as amended, 89 Stat. 793 (20 U.S.C. 1419), unless otherwise noted.

### § 121m.1 Scope; purpose.

(a) This part applies to assistance under section 619 of the Act.

(b) The Commissioner awards a grant to each State which provides special education and related services to handicapped children ages three, four, or five.

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section.

(d) The terms "special education" and "related services" have the meanings defined in § 121a.12 and § 121a.13 of this chapter.

(20 U.S.C. 1419(c).)

### § 121m.2 General provisions regulations.

Assistance under this part is subject to the requirements in Parts 100, 100b, 100c, and 121 of this chapter (including definitions and fiscal, administrative, property management, and other matters).

(20 U.S.C. 1419.)

### § 121m.3 Eligibility.

A State is eligible to receive a grant if:

(a) The Commissioner has approved its annual program plan under Part 121a of this chapter; and

(b) The State provides special education and related services to any handicapped children aged three, four, or five.

(20 U.S.C. 1419(a).)

### § 121m.4 Application.

To receive funds under this part, a State must submit an application to the Commissioner through its State educational agency.

(20 U.S.C. 1419(b).)

### § 121m.5 Application contents.

An application must include the following material:

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children ages three through five. These goals and objectives must be consistent with the State's full educational opportunity goal under § 121a.123 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient

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detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefitted indirectly. If children are to be benefitted indirectly, there must be a rationale that demonstrates the benefit.

(e) The number of local educational agencies or intermediate educational units, and the number and names of other agencies which will provide contractual services under the grant, the activities they will carry out, and the reasons for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the extent to which the activities met the objectives described under paragraph (b) of this section.

(20 U.S.C. 1419(b).)

### § 121m.6 Amount of grant.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under §§ 121a.750–121a.754 of this chapter.

(b) If appropriated funds are less than enough to pay in full the grants under this part, the amount of each grant is ratably reduced.

(20 U.S.C. 1419(a), (d).)

### § 121m.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under §§ 121a.750–121a.754 of this chapter if the State educational agency insures that those children have all of the rights afforded under part 121a of this chapter.

(b) The State educational agency may use up to five percent of its grant for the costs of administering the funds provided under this part.

(20 U.S.C. 1419(c).)

*Comment.* In carrying out the provisions of this part some activities are considered particularly appropriate for the use of these funds: (1) Providing parents with child development information; (2) assisting parents in the understanding of the special needs of their handicapped child; (3) providing parent counseling and parent training, where appropriate, to enable parents to work more effectively with their children; (4) providing essential diagnosis and assessment; (5) providing transportation essential to the delivery of services; (6) providing speech therapy, occupational therapy, or physical therapy.

### § 121m.8 Excess costs.

(a) If local or State funds are available to pay for the education of nonhandicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children.

(b) If no local or State funds are available for nonhandicapped children of the same age, funds under this part may be used to pay for all of the costs directly attributable to the education of the handicapped children.

(20 U.S.C. 1419(c).)

### § 121m.9 Administration.

(a) The State educational agency shall administer the funds provided under this part.

(b) The State educational agency may use the funds itself, or may contract with local educational agencies, intermediate educational units, or other agencies.

(20 U.S.C. 1419(a).)

### § 121m.10 Annual evaluation report.

(a) Within 90 days after the end of the grant period, the State educational agency shall submit a report to the Commissioner on the activities carried out under this part during that period.

(b) The report must contain:

(1) The results of the evaluation under § 121m.5(g), and

(2) In brief narrative form, the impact that these funds have had on the State's educational services to handicapped children ages three, four, and five.

(20 U.S.C. 1419(c).)

[FR Doc.77-24033 Filed 8-22-77;8:45 am]

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# SPECIFIC LEARNING DISABILITIES

### ACTION TAKEN OF PUBLIC COMMENTS

The Office of Education conducted a careful review of the public comments received and summarized them by topic.

Of the 982 letters of comment and 88 presenters at the public hearings, the most frequently expressed concern was with the inclusion of the use of a formula as a part of the diagnostic criteria. With the exception of the composition of the evaluation team, there were relatively few comments on other portions of the proposed regulations.

Only a few commenters made suggestions for a different approach to be used to determine the existence of specific learning disabilities. Each of these suggestions was determined to be inappropriate for use in these regulations because it was based on unproven theories or on current practice for which no professional consensus is available.

### ANALYSIS OF REGULATIONS

The appendix to the Part B regulations is amended by (1) a discussion of significant comments received on these regulations and the action taken with respect to those comments, and (2) an explanation of the basis for any changes made from the proposed rules published on November 29, 1976.

### TECHNICAL CORRECTIONS TO PART 121a REGULATIONS PUBLISHED ON AUGUST 23, 1977

(1) In the definition of "specific learning disability" (§ 121a.5(b)(9)), the phrase "of emotional disturbance" was inadvertently omitted. This has been corrected, and the revised definition is set out in amendment No. 1, below.

(2) The following comment and response regarding Civil Action is contained in the Part 121a Regulations published on August 23, 1977:

#### CIVIL ACTION (§ 121a.511)

*Comment:* Commenters wanted the regulations revised to allow for direct appeal to the courts without first using administrative hearing and review procedures if those procedures would be futile, the timeliness or adequacy of the administrative proceedings are being challenged, or a class action is involved. Commenters cited language in the Congressional Record in support of this interpretation (121 Cong. Rec. S20133 daily ed., November 19, 1975).

*Response:* No change has been made. The legislative history cited is nongermane as it was made in reference to the Senate Bill (S. 6) which did not contain the final statutory provision on civil actions. The provision on civil action was added as a Conference substitute. The issue of exhaustion of remedies will be up to the courts to resolve.

The statement made by the Office of Education regarding the legislative history cited by the commenter was incorrect, since the legislative history referred to occurred during consideration of the Conference Report. Therefore, a correction has been made to that statement, as set out in amendment No. 4, following.

NOTE.—The Office of Education has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis (previously referred to as an Inflationary Impact Statement) under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Number 13.449, Education of Handicapped Children, Part B.)

Dated: October 18, 1977.

ERNEST L. BOYER,
*U.S. Commissioner of Education.*

Approved: December 19, 1977.

JOSEPH A. CALIFANO, Jr.,
*Secretary of Health, Education, and Welfare.*

Part 121a of Title 45 of the Code of Federal Regulations is amended as follows:

1. Section 121a.5 is amended by revising paragraph (b)(9) to read as follows:

### § 121a.5 Handicapped Children.

* * * * *

(b) * * *

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

* * * * *

### § 121a.702 [Amended]

2. Section 121a.702 is amended by deleting paragraph (a)(2).

3. The following new sections are added:

### ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

### § 121a.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 121a.532, each public agency shall include on the multidisciplinary evaluation team:

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(20 U.S.C. 1411 note.)

### § 121a.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;
(ii) Listening comprehension;
(iii) Written expression;
(iv) Basic reading skill;
(v) Reading comprehension;
(vi) Mathematics calculation; or
(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;
(2) Mental retardation;
(3) Emotional disturbance; or
(4) Environmental, cultural or economic disadvantage.

(20 U.S.C. 1411 note.)

### § 121a.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(20 U.S.C. 1411 note.)

### § 121a.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(20 U.S.C. 1411 note.)

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4. Appendix A is amended as follows:

a. The response under "CIVIL ACTION (§ 121a.511)," appearing at 42 FR 42512, is amended to read as follows:

*Response.* No change has been made. The Office of Education has decided not to regulate on this question. The issue of exhaustion of remedies will be up to the courts to resolve.

The following paragraphs have been added immediately preceding the capital letter heading LEAST RESTRICTIVE ENVIRONMENT, appearing at 42 FR 42513:

### ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

Sections 121a.540–121a.543 provide procedures for evaluating specific learning disabilities which supplement the basic evaluation requirements set out above ("PROTECTION IN EVALUATION PROCEDURES," §§ 121a.530–121a.534). These additional procedures were written to comply with section 5(b) of Pub. L. 94–142, which required the Commissioner to develop regulations that establish (1) criteria for determining whether a particular disorder or condition may be considered a specific learning disability, (2) diagnostic procedures for use in identifying SLD children, and (3) monitoring procedures for use in determining whether public agencies are complying with the criteria and diagnostic procedures.

The following major changes have been made from the proposed regulations published on November 29, 1976 (The reasons are set forth below in the discussion of specific comments.):

(1) The formula has been deleted;

(2) The "50 percent" figure for determining "severe discrepancy" has been deleted;

(3) Provisions duplicating requirements in final regulations for general evaluation procedures and for medical examinations under Part B have been deleted.

(4) The monitoring sections have been deleted, since State educational agency (SEA) monitoring responsibilities are covered under § 121a.601 of the Part B regulations. The Commissioner has established these detailed monitoring responsibilities of the SEAs and will monitor each State's compliance with these and other requirements of Part B.

The statute provides that when these final regulations take effect, the two percent cap on the number of children with specific learning disabilities who may be counted for allocation purposes is removed (section 5(c)). Therefore, § 121a.-702(a)(2) of the Part B regulations, which repeated the statutory cap requirement, is deleted.

The following comments were made regarding the SLD proposed regulations:

### USE OF FORMULA

*Comment.* Many commenters objected to the formula proposed for establishing a severe discrepancy between ability and achievement. Their concerns fell primarily into four areas:

(1) The inappropriateness of attempting to reduce the behavior of children to numbers;

(2) The psychometric and statistical inadequacy of the procedure;

(3) The fear that use of the formula might easily lend itself to inappropriate use to the detriment of handicapped children;

(4) The inappropriateness of using a single formula for children of all ages, particularly pre-school children.

*Response.* The formula has been deleted. Because of the above and other concerns, the Office of Education conducted a study to determine the effectiveness of the formula. While the findings showed that the formula has a certain degree of operational validity, they also identified pronounced technical limitations in its application, including all four concerns listed above.

Given the type and number of technical limitations, it has been determined that the formula should not be included in the final regulations.

*Comment.* A few commenters recommended alternative formulae for use in determining the existence of a severe discrepancy between ability and achievement.

*Response.* None of these formulae were adopted. Each was found to have the same types of technical limitations as the formula in the proposed rules.

### USE OF OTHER APPROACHES

*Comment.* A few commenters suggested other approaches to defining specific learning disabilities. Among the suggestions for alternate approaches were those which:

(1) Required that a major discrepancy between verbal and performance scores on the WISC be established in order for a child to be considered as having a specific learning disability;

(2) Required that each area of information processing be subdivided into discrete functions and analyzed in terms of their effects on achievement. If the areas of discrepant functioning were determined to be critical to successful achievement, then a child could be considered as having a specific learning disability.

*Response.* Neither of these alternative approaches has been adopted. It was determined that the approaches could not be validated without engaging in extensive additional research.

### COMPOSITION OF THE EVALUATION TEAMS

*Comment.* Many commenters had recommendations for requiring additional participants on the evaluation team. This was particularly true of speech and language pathologists who stated that a high percentage of children evaluated for specific learning disabilities have speech and language problems. A significant number of comments on the topic of the team composition were received from members of the field of reading as well.

*Response.* The general requirements for evaluation in § 121a.532 provide for appropriate selection of individuals to serve on the multi-disciplinary team. Therefore, no substantive change was made. For children with language and speech problems as part of, or associated with, specific learning disabilities, speech and language pathologists represent an appropriate professional resource.

*Comment.* Some commenters wanted the parents of the child in question to be part of the evaluation team.

*Response.* No change has been made. The comprehensive evaluation of children necessarily involves the collection of a variety of information, including information from the parents concerning their perceptions of the child's behavior. Such a practice is considered routine and basic to any evaluation and therefore unnecessary to be specifically listed. It might be emphasized that parents have the right under other sections of these Part B regulations to (1) participate in the development of the individual education program of their child, (2) request a due process hearing in the event they disagree with the findings of the evaluation team, (3) have access to all records pertaining to their child, and (4) have other due process safeguards.

### SLD CRITERIA AND PROCEDURES

*Comment.* A few commenters felt that Congressional mandate in section 5(b) of Pub. L. 94–142, which required the Commissioner to establish criteria and procedures for use in identifying specific learning disabilities, was not adequately met by the regulations.

*Response.* The Office of Education has satisfied the Congressional mandate in the following manner:

First, criteria have been developed for determining the existence of a specific learning disability (i.e., it must be established (a) that a severe discrepancy exists between ability and achievement; (b) that there is a severe achievement problem in one or more of seven areas relating to communication skills and mathematical abilities; and (c) that the discrepancy is not the result of other known handicapping conditions or of environmental, cultural, or economic disadvantages).

Second, comprehensive diagnostic procedures have been established, which are to be used in concert with the above criteria. These procedures include (a) the basic evaluation requirements in sections 121a.530–121a.534 which must be used in evaluating all handicapped children (including those suspected of having a specific learning disability), and (b) the additional procedures (set out in §§ 121a.540–121a.543) to be used in evaluating SLD children.

Third, with respect to monitoring procedures, these are already included throughout the Part B regulations. The Commissioner has established State educational agency monitoring procedures under § 121a.601, and will monitor each State's compliance with these and other requirements of Part B.

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